

Constitution (as updated May 2025)

BA Limited

ABN 57 072 484 998

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1 Definitions and Interpretations

1.1 Definitions

In this Constitution unless the context requires otherwise:

Affiliated Club means a basketball club or association Registered directly or indirectly with a Constituent Association Member.

AGM or Annual General Meeting means the annual General Meeting of the Company required to be held by the Company under the Corporations Act.

Appointed Director means a Director appointed under clause 14.10.

Associate Member means a Member admitted to the Company under clause 5.6.

Basketball means “basketball” as recognised by FIBA from time to time and includes basketball for athletes with disabilities.

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 clauses 7.3 or 21.1.

CEO means a person appointed as chief executive officer of the Company by the Board under clause 18.

Chair means the Director elected to the office of Chair of Directors under clause 16.10.

Committee means a committee established by the Board under clause 20.

Company means BA Limited ABN 57 072 484 998.

Company Secretary means a person appointed as a company secretary of the Company by the Directors under clause 19.

Constituent Association Member means a Member recognised by the Company under clause 5.3.

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.

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

Deputy Chair means the Director elected to the office of Deputy Chair of Directors under clause 16.10.

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

Dispute means:

- (a) any disagreement where a party contends that the other party has acted contrary to this Constitution or the By-Laws;

- (b) any disagreement where a party contends that another party has exercised a right or power under this Constitution or the By-Laws in a manner that has unfairly affected the financial or other rights of the first party in a material and significant respect; and
- (c) a dispute that arises under clause 9.2(c).

Elected Director means a Director of the Company elected under clause 14.

Eligible Director Candidate means a person determined by the Nominations Committee in accordance with clause 27 as being eligible to hold office as a Director of the Company.

Eligible Director Criteria means the relevant skills, as determined by the Nominations Committee that would best assist the Board if held by Eligible Director Candidates.

FIBA means the Federation Internationale de Basketball.

Gender means all genders

General Meeting means a general meeting of Members and includes the AGM.

General Statutes and Internal Regulations means the general statutes and internal regulations of FIBA in force from time to time.

Governing Documents means:

- (a) in the case of an incorporated association, the association's constitution or rules; and
- (b) in the case of a company, the company's constitution.

Individual Member means a person who is:

- (a) a registered financial member of an Affiliated Club or an Associate Member; or
- (b) a player, coach, or official in any basketball competition conducted by or under the auspices of the Company and/or an Associate Member or a Constituent Association Member; or
- (c) a player, coach, or official in any basketball competition not conducted within Australia who is:

- (i) born in Australia; or
- (ii) holding Australian citizenship;

and who is admitted to the Company under clause 5.7.

Life Member means a Member admitted to the Company under clause 5.5.

Member means a member of the Company under clause 5.

Nominations Committee means the committee established by the Board under clause 27 to determine Eligible Director Candidates.

Objects mean the objects of the Company in clause 2.1.

Official Position means, in connection with any body corporate or organisation, a person who:

- (a) holds a position, whether elected or appointed, as president, vice president, chair, deputy chair, secretary, treasurer, director or equivalent of that body corporate or organisation or a body corporate or organisation which has, directly or indirectly, a material ownership or financial interest in that body corporate or organisation; or
- (b) has, directly or indirectly, a material ownership or financial interest in that body corporate or organisation.

Registration means registration or affiliation of an Individual Member or an Affiliated Club with a Constituent Association 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 5.2 and **Registered** has a corresponding meaning.

Special Resolution means a resolution that has been passed by receiving votes in favour of the resolution from:

- (a) at least 75% of votes cast by Constituent Association Members entitled to vote at the General Meeting; and
- (b) at least 5 Constituent Association Members entitled to vote at the General Meeting.

Sporting Power means that power delegated to the Company by FIBA for the exclusive control and management of Basketball in Australia.

Stakeholder Forum means a forum convened by the Directors in accordance with clause 12.

State and Territory means the States of Australia, the Northern Territory and the Australian Capital Territory.

1.2 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, by telephone or other electronic means, or by proxy;
- (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; and
- (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.

1.3 Corporations 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 Corporations Act, the same meaning as in that provision of the Corporations Act.
- (b) The provisions of the Corporations Act that apply as replaceable rules are displaced by this Constitution and accordingly do not apply to the Company.

1.4 Headings

Headings are inserted for convenience and do not affect the interpretation of this Constitution.

2 Objects

2.1 Objects

The Objects of the Company are to:

- (a) exercise the Sporting Power as the national federation for Basketball in Australia and act as the sole Australian affiliated member of FIBA and the International Wheelchair Basketball Federation in accordance with the General Statutes and Internal Regulations;
- (b) conduct, encourage, promote, advance, control and manage all levels of Basketball in Australia interdependently with Constituent Association Members and others;
- (c) conduct elite national level competitions, or licence the operator of same;
- (d) adopt, formulate, issue, interpret and amend by-laws, rules and regulations for the control and conduct of Basketball in Australia in keeping with the terms of this Constitution, as amended from time to time;
- (e) encourage the provision and development of appropriate facilities for participation in Basketball;
- (f) maintain and enhance standards, quality and reputation of Basketball for the collective and mutual benefit and interests of Members and Basketball;
- (g) promote the sport of Basketball for commercial, government and public recognition and benefits;
- (h) select, prepare and enter Australian teams in international competitions;
- (i) promote, control, manage and conduct Basketball events, leagues, competitions and championships;

- (j) undertake other actions or activities necessary, incidental or conducive to advance these Objects;
- (k) have regard to the public interest in its operations; and
- (l) encourage and promote widespread participation in the sport to enhance opportunities for every participant to reach levels appropriate to their ability and aspiration.

2.2 FIBA

- (a) FIBA has drawn up the General Statutes and Internal Regulations governing Basketball which, where applicable, bind the Company.
- (b) Subject to any applicable law, the Company must:
 - (i) comply with, and do everything within its power to enforce compliance with, the General Statutes and Internal Regulations where they are applicable;
 - (ii) represent Australia's interest at, and co-operate with, FIBA in all matters relating to the organisation of international Basketball competitions, the Company's own Basketball competitions and Basketball in general;
 - (iii) assist FIBA to ensure that such that international leagues or other such groups of clubs are not formed without complying with the applicable General Statutes and Internal Regulations of FIBA;
 - (iv) inform the FIBA Secretary General of all international competitions taking place within Australia; and
 - (v) perform, or use best endeavours to ensure they are performed by a relevant anti-doping authority, doping controls and inform the Secretary General, in accordance with anti-doping laws and policies and to the extent permitted by law, of all doping control results and anti-doping rule violations within Australia.

3 Powers

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

4 Income and Property of Company

4.1 Sole Purpose

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

4.2 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 principle and/or interest with respect to moneys borrowed by the Company from a Member on commercial terms documented in writing;

- (c) for the delivery of agreed programs that benefit the sport of Basketball;
- (d) of money that is collected by the Company on behalf of that Member;
- (e) of reasonable rent for premises let by them to the Company; or
- (f) from time to time as determined by the Board are within the ambit of the Objects, subject at all times to the Corporations Act.

5 Membership

5.1 *Categories of Members*

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

- (a) Constituent Association Members;
- (b) Life Members;
- (c) Associate Members; and
- (d) Individual Members.

5.2 *Admission to membership for Members other than Constituent Association Members*

A person will become a Member, and the Directors will direct the Company Secretary 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 General Statutes and Internal Regulations where applicable;
- (b) pay the fees and subscriptions determined to apply to the relevant membership category under clause 9; and
- (c) support the Company in the encouragement and promotion of the Objects.

5.3 *Constituent Association Members*

- (a) The Company will recognise one incorporated entity only in each State and Territory as the Constituent Association Member responsible for ensuring the efficient administration of basketball in that State or Territory in accordance with the Objects. Constituent Association Members must be incorporated entities.
- (b) The Constituent Association Members, at the time of adoption of this Constitution, will be the entities recognised by the Directors as Constituent Association Members and listed on the Company's website.
- (c) Each Constituent Association Member will:
 - (i) have objects and strategic plans that align with and are not inconsistent with the Objects and the strategic plans of the Company;
 - (ii) do all that is reasonably necessary to enable the Objects to be achieved, subject to any legislation and the Governing Documents applicable to each Constituent Association Member;

- (iii) notify the Company of any proposed special resolution to amend its Governing Documents at the same time as it is required to give notice to its own members;
- (iv) effectively promulgate and enforce the Constitution and By-Laws and the General Statutes and Internal Regulations, where applicable;
- (v) be responsible and accountable to the Company to use its best endeavours to achieve its agreed contribution to outcomes identified under the Company's strategic plan as revised from time to time;
- (vi) provide the Company with copies of:
 - (A) its audited financial statements (including notes thereto);
 - (B) its annual report;
 - (C) the report(s) issued by the general manager and/or financial controller of the Constituent Association Member; and
 - (D) any other documents tabled at its annual general meeting, immediately following its annual general meeting;
- (vii) provide the Company with copies of its business plans and budgets from time to time and within 28 days of a request by the Board, or such other longer period that is reasonably agreed between the Company and the Constituent Association Member;
- (viii) subject to the terms of the constitution of each Constituent Association Member and the governing legislation applicable to the actions of the board of directors of each Constituent Association Member:
 - (A) be bound by this Constitution and the By-Laws, and by the General Statutes and Internal Regulations, where applicable; and
 - (B) act in good faith and loyalty to maintain and enhance the Company and Basketball, its standards, quality and reputation for the collective and mutual benefit of the Members and Basketball;
- (ix) 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; and
- (x) 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.

5.4 *Governing Documents of Constituent Association Members:*

- (a) Each Constituent Association Member shall take all steps necessary to ensure its Governing Documents, and any amendments to those Governing Documents, are not inconsistent with the Constitution and the By-Laws, subject to any prohibition or inconsistency in any relevant legislation.
- (b) Each Constituent Association member must:
 - (i) advise the Company as soon as practicable of any serious administrative, governance, operational or financial difficulties the Constituent Association Member is having;

- (ii) assist the Company in investigating those issues; and
- (iii) cooperate with the Company in addressing those issues in whatever manner the Company and the Constituent Association Member agree.

5.5 *Life Members*

- (a) Life Membership is the highest honour which can be bestowed by the Company for longstanding and valued service to Basketball in Australia.
- (b) On the nomination of the Board, any individual may be bestowed with the honour of being a Life Member at any AGM by Special Resolution, subject to clause 5.2.
- (c) The Board will establish a policy to be administered by the Honours and Awards Committee to set out:
 - (i) the nomination process for Life membership
 - (ii) the categories of Life Membership which exist;
 - (iii) the criteria to be met by each category of Life Member; and
 - (iv) the privileges and benefits of each category of Life Member.
- (d) The Life Members of the Company will be listed on the Company's website

5.6 *Associate Members*

- (a) Only an incorporated entity may become an Associate Member.
- (b) Associate Membership status may be granted by the Board, and must be confirmed by a Special Resolution, on such terms and conditions as the Board may see fit.
- (c) Any entity seeking Associate Membership must make written application to the Board for such status accompanied by:
 - (i) an up-to-date certified copy of the applicant's Governing Documents;
 - (ii) a copy of the applicant's most recent financial accounts; and
 - (iii) such other information as may be required by the Board.
- (d) Associate Membership may be suspended or cancelled by the Board.
- (e) The By-Laws may set out:
 - (i) the categories of Associate Membership which exist;
 - (ii) the criteria to be met by each category of Associate Member; and
 - (iii) the privileges and benefits of each category of Associate Member which may include the right to receive notice and attend, but cannot include the right to vote at, General Meetings.
- (f) The Board may only admit an Associate Member where it considers that it is in the best interests of Basketball in Australia that the entity be so admitted and where the activities of the entity do not materially interfere with the activities of a Constituent Association Member in carrying out its objects under its Governing Documents.

5.7 Individual Members

- (a) No individual shall be Registered with the Company as an Individual Member except in accordance with this clause 5.7. The Board may in its 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 5.7(a) an individual that is recognised, affiliated, accredited or Registered by or with, a Constituent Association Member will, upon Registration with the Constituent Association 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 including national team players contracted overseas.
- (d) To remain a Member, all Individual Members must:
 - (i) renew their membership, affiliation, accreditation or Registration with their Affiliated Club, Constituent Association 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 Affiliated Club, Constituent Association 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 Affiliated Club, Constituent Association 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 5.2, an Individual Member is bound by, and must comply with, this Constitution and the By-Laws.
- (f) An Individual Member is entitled to any benefits of membership prescribed to apply to Individual Members in the By-Laws but, in any event, shall not be entitled to receive notice of, or attend or vote, at General Meetings.

5.8 General

- (a) The Company must keep a register of all Members in accordance with the Corporations Act.
- (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) Membership is personal to each 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 not act in a manner unbecoming of a Member or prejudicial to the Objects and/or interests of the Company or Basketball.

5.9 Limited Liability

Members have no liability except as set out in clause 26.

6 Cessation of Membership

6.1 Cessation

A person ceases to be a Member on:

- (a) resignation;
- (b) 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; and
- (e) without limiting the foregoing:
 - (i) in the case of Members who are not Constituent Association Members, that Member no longer meeting the requirements for Membership according to clause 5 and/or the By-Laws; and
 - (ii) in the case of Members who are Constituent Association Members, that Member ceasing to be a Member in accordance with clause 8.1.

6.2 Resignation

For the purposes of clause 6.1(a), a Member may resign as a member of the Company by giving 14 days written notice to the Company.

7 Grievances and Discipline of Members

7.1 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.

7.2 Mediation for Disputes arising between the Company and its Constituent Association Members

- (a) In the event of a Dispute between the Company and a Constituent Association Member, the parties must attempt to resolve the Dispute using the dispute resolution procedure set out in this clause before resorting to alternative procedures, including litigation.
- (b) The Dispute resolution procedure is as follows:
 - (i) if a party believes that a Dispute has arisen, it must serve a dispute notice on the other party;
 - (ii) the dispute notice must state that a Dispute has arisen and set out, in sufficient detail, what the Dispute is about;
 - (iii) within 21 days of the date of service of a dispute notice that conforms with clause 7.2 (b) (ii), the parties must meet to resolve the Dispute;
 - (iv) if the parties cannot resolve the Dispute at the meeting in clause 7.2 (b) (iii), the parties jointly appoint a mediator to hear the Dispute. If the parties cannot agree on the identity of a mediator within 21 days of the date of the meeting in clause 7.2 (b) (iii), the parties may apply to the Resolution Institute to appoint a mediator;
 - (v) once the mediator has accepted the appointment, the parties must comply with the mediator's instructions; and
 - (vi) if the Dispute is not resolved within 45 days of the appointment of a mediator (or such

other time as is agreed by the parties in writing) or if a party abandons the process before the Dispute can be resolved, the parties will be entitled to pursue any other avenue available to them to resolve the Dispute.

- (c) The mediator may fix the charges for the mediation. The fee for the mediation must be paid equally by the parties.
- (d) If the Dispute is settled at or prior to the mediation, all parties must sign a settlement deed. The deed will contain a confidentiality clause and its terms will be binding on the parties.

7.3 By-Laws

- (a) Subject to clause 21, the Board may make a By-Law or By-Laws:
 - (i) for the hearing and determination of:
 - (A) grievances by any Member who feels aggrieved by a decision or action of the Company following mediation;
 - (B) grievances by any Member who feels aggrieved by a decision or action of a Constituent Association Member or Affiliated Club provided that all avenues of appeal available under the constitution of the Constituent Association Member or Affiliated Club have been exhausted; and
 - (C) disputes between Members relating to the conduct or administration of Basketball;
 - (ii) for the discipline of Members;
 - (iii) for the formation and administration of an Appeals Tribunal which must be independent of any party before it on the matter which is the subject of the appeal in question; and
 - (iv) the termination of the Member from the membership of the Company (except in the case of Constituent Association Members).
- (b) The Board in its sole discretion may refer an allegation (which in the opinion of the Board is not vexatious, trifling or frivolous) by a complainant (including but not only 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 Board 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 and/or Basketball; or
 - (iii) amended its Governing Documents so that they conflict with this Constitution; or
 - (iv) prejudiced the Company or Basketball or brought the Company or Basketball into disrepute,for investigation either under the procedures set down in the By-Laws, to mediation under clause 7.2 or for investigation by such other procedure and/or persons as the Board considers appropriate and for determination under the procedures set out in the By-Laws.
- (c) The Board need not act under this clause in respect of any appeal or other matter until satisfied that all avenues of appeal and/or hearing at the Affiliated Club and Constituent Association Member level have been exhausted first.

- (d) The Board may include in any By-Law a final right of appeal to an independent body outside the control of Basketball.

8 Termination of membership

8.1 *Termination of Membership of Constituent Association Member*

- (a) No determination can be made by the Directors under clause 8.1 unless:
 - (i) the relevant Constituent Association Member has entered into administration or become insolvent or where a like event, in the reasonable opinion of the Directors, has occurred; or
 - (ii) all avenues of appeal available to the relevant Constituent Association Member under the By-Laws have been exhausted.
- (b) Subject to compliance with clause 8.1 (and the By-Laws), the Directors may recommend to a General Meeting to terminate the membership of a Constituent Association Member.
- (c) Upon recommendation from the Directors under clause 8.1(b), a General Meeting may, by Special Resolution, terminate the membership of a Constituent Association Member.
- (d) Where a recommendation is made by the Directors to a General Meeting in accordance with clause 8.1(b):
 - (i) the defence or explanation given by the Constituent Association Member in any determination under clause 7.3(b) (if any) together with the Board's determination shall be included in the notice of General Meeting provided to Members;
 - (ii) the Constituent Association Member the subject of the recommendation may be present during the General Meeting but is not entitled to vote on the recommendation;
 - (iii) the Directors may also recommend to the General Meeting, if a Special Resolution is passed under clause 8.1(b) and subject to clause 5.2, to admit another body meeting the requirements in clause 5.3(a) from the relevant State or Territory as a Constituent Association Member for that State or Territory; and
 - (iv) the General Meeting may, by Special Resolution, admit another State or Territory Association as a Constituent Association Member to represent the relevant State or Territory.

9 Fees and Subscriptions

9.1 *Fees payable by Members*

- (a) The Directors must determine from time to time:
 - (i) an amount (if any) payable by an applicant for membership (other than an Individual Member);
 - (ii) the amount of the annual membership fee payable by each Member, or any category of Members (other than an Individual Member);
 - (iii) any other amount to be paid by each Member, or any category of Members (other than an Individual Member), whether of a recurrent or any other nature that is:
 - (A) agreed between the Company and the relevant Member to which the obligation relates; or

- (B) if agreement with the relevant Member is not achieved, as resolved unanimously by all other Constituent Association Members in a General Meeting; and
- (C) the due date for payment of annual membership fees of each Constituent Association Member, after consultation with the Constituent Association Member.
- (b) The Company cannot determine any membership fee to be paid by an Individual Member.
- (c) Each Member must pay to the Company the amounts determined under this clause 9 in accordance with clause 9.1(a)(iii)(C).

9.2 *Non-Payment of Fees*

- (a) Subject to clause 9.2(b) but not withstanding any other clause of this Constitution, the right of a Constituent Association Member to attend and vote at a General Meeting may be suspended while the payment of any undisputed subscription or other undisputed amount(s) determined under clause 9.1(a)(i) or clause 9.1(a)(ii) is in arrears greater than 90 days.
- (b) Where a Constituent Association Member is in arrears greater than 90 days for any undisputed amount:
 - (i) the Board may enter an arrangement with the Constituent Association Member for the payment of the amount;
 - (ii) any arrangement must be disclosed to other Constituent Association Members, but does not require their approval; and
 - (iii) clause 9.2(a) does not suspend the right of a Constituent Association Member to attend and vote at a General Meeting provided that the Constituent Association Member has not breached the arrangement.
- (c) Where a Constituent Association Member has not paid all or part of any subscription or other amount determined under clause 9.1(a)(i) or clause 9.1(a)(ii) and:
 - (i) the Constituent Association Member is more than 90 days in arrears; and
 - (ii) the Constituent Association Member disputes the debt,

the Company and the Constituent Association Member must attend a mediation following the procedure set out in clause 7.2.
- (d) If following the mediation in clause 9.2(c) the parties have failed to resolve the matter, the Constituent Association Member's right to attend and vote at a General Meeting will be suspended if the remaining Constituent Association Members, by Special Resolution, vote to do so.

10 *General Meetings*

10.1 *Annual General Meeting*

- (a) AGMs of the Company are to be held:
 - (i) according to the Corporations Act; and
 - (ii) at a date and venue determined by the Directors.

10.2 Power to convene General Meeting

- (a) The Directors may convene a General Meeting when they think fit and must do so if required by the Corporations Act.
- (b) The Constituent Association Members may convene a General Meeting in accordance with the Corporations Act.

10.3 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 24 and the Corporations Act.
- (b) If the proposed business of a General Meeting includes the election of an Elected Director, the notice must include:
 - (i) a list of Eligible Director Candidates ranked by the Nominations Committee; and
 - (ii) a profile for each Eligible Director Candidate as determined by the Nominations Committee.
- (c) At least 60 days prior to the proposed date of the AGM, the CEO will request from Constituent Association Members notices of motions, which must be received no less than 28 days prior to the AGM.
- (d) 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 Corporations 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 Constituent Association Member or Director in accordance with the Corporations Act; and
 - (iv) where applicable, a list of all Eligible Director Candidates for positions to be elected at the relevant General Meeting.

10.4 No other business

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

10.5 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) Constituent Association Members according to the Corporations Act;
- (b) the Directors at the request of Constituent Association Members; or
- (c) a Court.

10.6 *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:

- (a) to each Member entitled to attend the General Meeting; and
- (b) to each other person entitled to notice of a General Meeting under the Corporations Act; and
- (c) at least 7 days prior to the date of the General Meeting.

10.7 *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, the technology that will be used to hold the meeting in that manner.

10.8 *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 under the Corporations Act.

10.9 *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.

10.10 *Proxy at postponed General Meeting*

Where:

- (a) by the terms of an instrument appointing a Proxy, that Proxy is authorised to attend and vote at a General Meeting on behalf of the appointing Constituent Association 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 Proxy, unless the appointing Constituent Association 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.

10.11 *Non-receipt of notice*

- (a) 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.
- (b) The operation of clause 10.11(a) in respect of a notice that is not received is subject to the notice being sent to the relevant email address nominated by the recipient for the receipt of notices or delivery of the notice to the registered office of the recipient.

10.12 Representatives

- (a) In accordance with the Corporations Act, each Constituent Association Member is entitled to appoint an individual as their Representative to attend General Meetings (provided that the Constituent Association Member has not appointed a proxy under clause 10.13), and to exercise the powers of the Constituent Association Member in relation to resolutions to be passed with Members present in person, by telephone or by way of other electronic device.
- (b) A Constituent Association Member may appoint more than one Representative but only one Representative may exercise the Constituent Association Member's powers at any one time.

10.13 Right to appoint proxy

- (a) A Constituent Association Member entitled to attend a General Meeting of the Company is entitled to appoint another person as their proxy to attend the meeting in their place in accordance with the Corporations Act.
- (b) A proxy has the same rights as the Constituent Association Member at the meeting and may be appointed in respect of more than one meeting.
- (c) No person is entitled to be appointed proxy for more than one Constituent Association Member for a General Meeting of the Company. If a person is appointed proxy by more than one Constituent Association Member for a General Meeting:
 - (i) in any resolution or poll, the Company need only count the vote of the first proxy received by the Company for the General Meeting; and
 - (ii) for the purposes of constituting a quorum, the Company shall count the presence of the first proxy received by the Company for the General Meeting.
- (d) A proxy may be revoked by the appointing Constituent Association Member at any time by notice in writing to the Company.

10.14 Form of proxy

The instrument appointing a proxy may be in a common or usual form, or in such form as determined by the Directors from time to time, provided it complies with the requirements under the Corporations Act.

10.15 Lodgement of proxy documents

- (a) A proxy may vote at a General Meeting or adjourned or postponed meeting (as the case may be) only if the instrument appointing the proxy is 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.

10.16 Authority given by appointment

- (a) Unless the terms of the appointment specify to the contrary, an appointment by a Constituent Association Member confers authority on a Proxy:

- (i) to agree to a General Meeting being convened by shorter notice than is required by the Corporations 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 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 Constituent Association 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 fail or fails 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.

11 Proceedings at General Meeting

11.1 *Number for a quorum*

The number of Constituent Association Members who must be present and eligible to vote for a quorum to exist at a General Meeting is any number of Constituent Association Members that is more than half of the Constituent Association Members.

11.2 *Use of Technology*

- (a) A Member not physically present at a General Meeting may be permitted to participate in the General Meeting using technology that allows that Member to clearly and simultaneously communicate with the Members who are physically present.
- (b) A Member participating in a General Meeting as permitted under clause 11.2(a) is taken to be present at that General Meeting and any vote by a Constituent Association Member is taken to have been voted in person.

11.3 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.

11.4 Quorum and time – General Meetings

If within 30 minutes after the time appointed for a 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, Constituent Association Members is dissolved; and
- (b) in any other case stands adjourned to such other day, time and place as the chair determines.

11.5 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 11.4(a), such Constituent Association Members as are present on the adjourned date shall constitute a quorum.

11.6 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; or
 - (iii) a representative of a Constituent Association Member who is entitled to vote and is chosen by a majority of the Constituent Association Members present.

11.7 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 Corporations Act, terminate discussion or debate on any matter whenever he or she considers it necessary or desirable for the proper conduct of the meeting.
- (b) A decision by the chair under this clause 11.7 is final.

11.8 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 the meeting, 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 Constituent Association Members present.

- (c) Only unfinished business is to be transacted at a meeting resumed after an adjournment.

11.9 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.

11.10 Questions decided by majority

Subject to the requirements of the Corporations Act and except in the case of a Special Resolution, a resolution is passed by receiving votes in favour of the resolution from:

- (a) a simple majority of the votes cast by Constituent Association Members entitled to vote at the General Meeting; and
- (b) a majority of the Constituent Association Members entitled to vote at the General Meeting.

11.11 Equality of votes

Where an equal number of votes is 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.

11.12 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 or required by this Constitution 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.

11.13 Poll

- (a) If a poll is properly demanded in accordance with the Corporations 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 Constituent Association Member will have the number of votes fixed under clause 13.1.
- (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.

11.14 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.

11.15 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.

12 Stakeholder Forums

12.1 Power to convene Stakeholder Forums

The Directors shall convene a Stakeholder Forum at least once in each calendar year.

12.2 Conduct of a Stakeholder Forum

- (a) A Stakeholder Forum is to provide an opportunity for open discussion on all matters relating to Basketball in Australia and all attendees shall have equal opportunity to participate in discussions. The Directors will 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.

13 Votes of Members

13.1 Votes of Members

- (a) At a General Meeting, on a show of hands and on a poll, each of the Constituent Association Members shall have the number of votes calculated as follows:
 - (i) 15,000 or less registered members, one vote;
 - (ii) between 15,000 and 100,000 registered members, two votes; and
 - (iii) 100,000 or more registered members, three votes.
- (b) The Directors shall determine the number of votes exercisable by each Constituent Association Member by the number of registered members each had during the previous calendar year ending 31 December.
- (c) Each Constituent Association Member shall exercise its vote or votes by its authorised representative. Each Constituent Association Member must notify the Company of its authorised representative no later than 24 hours prior to the General Meeting;
- (d) Each Constituent Association Member may have two people attend a meeting and both have the right to speak, however the votes of the Constituent Association Member can only be exercised in accordance with clause 13.1(c).
- (e) No Members other than Constituent Association Members are entitled to vote at General Meetings.

13.2 Election of Directors

- (a) Elections for Elected Directors shall be conducted by secret ballot in accordance with this clause 13.2 at or before the relevant General Meeting on papers or via electronic form prepared by the Company Secretary.
- (b) The candidates for election are each person that has applied under clause 14.3 for the position of Elected Director that the Nominations Committee has determined to be an Eligible Director Candidate.
- (c) Except where there is only one Eligible Director Candidate for each position of Elected Director to be filled, the secret ballot will be conducted as a poll as follows:
 - (i) there will be a single round of voting for all positions of Elected Director to be filled;
 - (ii) the ballot paper, which may be in electronic form, will list each Shortlisted Director Candidate in alphabetical order by surname;
 - (iii) each Constituent Association Member will receive the number of ballot papers that corresponds with the number of votes that the Directors have determined that Constituent Association Member has under clause 13.1(a);
 - (iv) the ballot paper is to be completed by the Constituent Association Member placing a number next to each candidate in order of preference commencing with the number 1 for its preferred candidate;
 - (v) the returning officer will count the ballot papers and calculate the total points for each candidate using the following method:
 - (A) a first preference vote will score one point;
 - (B) a second preference vote will score two points; and
 - (C) each successive preference vote will score one point more than the preceding preference vote,and calculating the points received by a candidate as the sum of the points that the candidate received for each preference vote;
 - (vi) the candidate who receives the lowest total points calculated in accordance with this method is resolved to be elected to the first vacant Elected Director position;
 - (vii) if there is more than one Elected Director position to fill, the candidate that receives the next lowest total points is resolved to be elected to the second vacant position;
 - (viii) if there are further vacant Elected Director positions to be filled, those positions will be progressively filled by the candidate that has the next lowest total points until all the vacant Elected Director positions have been filled; and
 - (ix) if at any stage during the ballot there is a single Elected Director position to be filled and there are two or more candidates with equal next lowest total points, the candidate elected to that position will be determined by:
 - (A) listing each tied candidates' preference votes in order of best (lowest) to worst (highest), and at the first point(s) where there is a difference the tie will be broken in favour of the candidate with the better (lower) preference vote; and

- (B) if by applying the procedure in (A) above there remains two or more tied candidates with identical preference votes, the successful candidate will be determined by the CEO drawing by lot a candidate from among those tied candidates with identical preference votes.

13.3 Resolutions not in General Meeting

- (a) If all Constituent Association Members entitled to vote, sign a document (that has been circulated to all Members entitled to notice of a General Meeting) 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 Constituent Association Member.
- (b) For the purposes of clause 13.3(a), two or more separate documents containing statements in identical terms each of which is signed by one or more Constituent Association Members entitled to vote are deemed together to constitute one document containing a statement in those terms signed by those Constituent Association Members on the respective days on which they signed the separate documents.
- (c) Any form of visible electronic communication purported to be signed by a Constituent Association Member for the purpose of this clause is deemed to be a document in writing signed by that Member.

14 Directors

14.1 Number of Directors

- (a) There must be a minimum of five and a maximum of nine Directors.
- (b) Subject to Clause 14.1 (c) up to six Directors are to be elected by the Constituent Association Members (Elected Directors), and up to three Directors are to be appointed under clause 14.10.
- (c) From the 2026 Annual General Meeting, subject to clause 14.1(a), not more than five Directors are to be elected by the Members (Elected Directors), and, excluding any Directors appointed to fill a casual vacancy under clause 14.9, not more than four Directors are to be appointed under clause 14.10.

14.2 Eligibility

- (a) To be eligible to hold office as a Director, a person must be determined as an eligible candidate by the Nominations Committee in accordance with clause 27 (Eligible Director Candidate).
- (b) A person who:
 - (i) is an employee of the Company, a Constituent Association Member or an Affiliated Club;
or
 - (ii) holds an Official Position with a Constituent Association Member or an Affiliated Club,
or

- (iii) was a Director of the Company and clause 14.5(b) applies, (each a disqualifying position) may not hold office as a Director.
- (c) A Director who accepts a disqualifying position must notify the other Directors of that fact as soon as possible and in any event within 48 hours of accepting the disqualifying position and is deemed to have vacated office as a Director.
- (d) A person elected or appointed as a Director at the time of holding a disqualifying position must resign from that disqualifying position within seven days of the date they are elected or appointed as a Director.
- (e) No person shall be eligible to stand for an Elected Director position if, during the proposed term of office, they would be in breach of clause 14.2(b).
- (f) A person who has been the CEO of the Company is not eligible to be elected or appointed as a Director for a period of 3 years after he or she has been the CEO of the Company.

14.3 Call for applications for vacant Elected Director positions

- (a) At least 60 days prior to the proposed date of the Annual General Meeting at which a resolution or resolutions will be proposed to fill a vacancy in the position of an Elected Director, the Board will direct the CEO to:
 - (i) publish to each Constituent Association Member the number of vacant Elected Director positions and the Eligible Director Criteria determined in accordance with clause 27.7(b)(iii);
 - (ii) request that the Constituent Association Members nominate candidates for the vacant Elected Director positions; and
 - (iii) request applications (which comply with this clause 14.3) from persons who wish to be a candidate for election for the available Elected Director position or positions by advertising the request for nominations on the Company website (and in such other publications as the Board may in its discretion direct).
- (b) Nominations for vacant Elected Director positions may be made by:
 - (i) an applicant personally;
 - (ii) a Director of the Company;
 - (iii) a Constituent Association Member; or
 - (iv) any other person.
- (c) An application must be:
 - (i) in the form required by the Directors;
 - (ii) signed by the applicant;
 - (iii) signed by any person that is nominating an applicant; and
 - (iv) delivered to the CEO no later than 14 days after the call for nominations in clause 14.3(a).
- (d) The CEO will promptly send to the chair of the Nominations Committee each application that the CEO receives that complies with clause 14.3(c), to be considered by the Nominations Committee in accordance with the provisions of clause 27.

14.4 Nominations from Constituent Association Members

Each Constituent Association Member may nominate up to two persons for each vacancy in the position of Elected Director.

14.5 Term of office of Directors generally

- (a) Subject to clauses 14.7(b), 14.8 and 14.9, an Elected Director will hold office for a term of four years, expiring at the conclusion of the fourth AGM following the General Meeting at which the election occurred.
- (b) No person shall be entitled to hold office as a Director if, in the preceding four year period they held office as a Director and, at the end of their term of their appointment, they were not entitled to serve another term due to clause 14.8.

14.6 Office held until end of meeting

A retiring Elected Director holds office until the end of the meeting at which that Elected Director retires but, subject to clause 14.8, is eligible for re-election.

14.7 Elected Director elected at General Meeting

- (a) At a General Meeting:
 - (i) at which an Elected Director retires; or
 - (ii) at the commencement of which there is a vacancy in the office of an Elected Director, there will be a vote of the Constituent Association Members conducted in accordance with clause 13.2 to fill the vacancy by electing an Eligible Director Candidate to that office.
- (b) Service as an Elected Director under clause 14.7(b) shall be deemed to be a full term of office for the purposes of clauses 14.5(b) and 14.8 except where their period of office is less than half of the term of the Elected Director in whose place they were appointed.

14.8 Maximum term of office for Directors

Subject to clause 14.7(c), a Director may not serve more than two consecutive terms as a Director.

14.9 Casual vacancy

- (a) Subject always to clauses 14.2 and 27, a casual vacancy may be filled:
 - (i) in accordance with clause 14.10 (Appointed Director).
 - (ii) A person appointed to a casual vacancy under clause 14.10(a), subject to clauses 14.8 and 14.13 holds office for the remainder of the vacating Director's term and, subject to this Constitution, they may offer themselves for re-election.
- (b) Service as a Director under this clause 14.9 shall only be a full term of office for the purposes of clauses 14.5 and 14.8 where their period of office is equal to or greater than half of the term of the Director in whose position they were appointed.

14.10 Appointed Directors

- (a) In addition to the Elected Directors, the Directors may themselves (subject always to clauses 14.2 and 27) appoint up to four Appointed Directors because of their special business acumen and/or technical skills and/or knowledge of community sport.

- (b) Subject to clauses 14.8 and 14.13, an Appointed Director appointed under this clause holds office for a period determined by the Directors not to exceed four years and the appointment will be on such other terms as the Directors determine.
- (c) Service as an Appointed Director under clause 14.10(b) (which for clarity shall not include the Directors elected under clause 14.7) shall be deemed to be a full term of office for the purposes of clauses 14.5 and 14.8 except where the period of appointment is less than two years.
- (d) The Directors must send to the chair of the Nominations Committee a written proposal for each person that they are proposing to appoint as an Appointed Director, to be considered by the Nominations Committee in accordance with the provisions of clause 27.
- (e) In considering the appointment of Appointed Directors, the Directors must have regard to any requirements or objectives that the Australian Sports Commission has for gender composition of the board of national sporting organisations in light of the then gender composition of the Board.

14.11 Remuneration of Directors

A Director may not be paid for services as a Director but, with the approval of the Directors and subject to the Corporations Act, may be:

- (a) paid by the Company for services rendered to it other than as a Director, as approved by an ordinary resolution at a General Meeting; 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.

14.12 Honorarium

The Company may in General Meeting by ordinary resolution determine to pay a Director an ex-gratia payment.

14.13 Removal of Director

- (a) Subject to the provisions of the Corporations Act, the Company may in General Meeting by ordinary resolution remove any Director prior to the expiration of that Director's term of office.
- (b) Unless otherwise resolved at a General Meeting, a Director removed in accordance with clause 14.13(a) cannot be re-appointed or re-elected as a Director within four years of their removal.

14.14 Vacation of office

The office of a Director becomes vacant when the Corporations Act says it does, in accordance with clause 14.2 (c) and also if the Director:

- (a) is removed in accordance with clause 14.13;
- (b) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under a law relating to mental health;
- (c) resigns office by notice in writing to the Company;

- (d) accepts appointment to, or becomes the holder of, a disqualifying position as set out in clause 14.2 and does not resign from that position;
- (e) is not present personally at three consecutive Directors' meetings without leave of absence from the Directors.

15 Powers and Duties of Directors

15.1 *Directors to manage the Company*

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

15.2 *Specific powers of Directors*

Without limiting clause 15.1, 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.

15.3 *Time, etc*

Subject to the Corporations 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.

15.4 *Delegation of Powers*

- (a) Without limiting clause 18.4 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) may result in a 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.

15.5 *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.

16 Proceedings of Directors

16.1 *Directors' meetings*

- (a) Subject to clause 16.1(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 6 times in each calendar year.

16.2 *Use of Technology*

- (a) A Director not physically present at a Directors' Meeting may be permitted to participate by using technology that allows that Director to clearly and simultaneously communicate with the Directors who are physically present.
- (b) A Director participating in a Directors' Meeting as permitted under clause 16.2(a) is taken to be present at the Directors' Meeting and if the Director votes at the Directors' Meeting, is taken to have voted in person.

16.3 *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 by proxy and entitled to vote. Each Director present has one vote on a matter arising for decision by Directors.

16.4 *Proxy and voting*

A Director who is present at a Directors' meeting as a proxy for another Director has, in addition to their own vote, one vote for each absent Director who would be entitled to vote if present at the meeting and for whom that person is a proxy.

16.5 *No casting vote*

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

16.6 *Quorum*

The number of Directors necessary to constitute a quorum is any number of Directors that is more than half of the Directors.

16.7 *Effect of vacancy*

- (a) Subject to clause 16.6, the continuing Directors may act despite a vacancy in their number.
- (b) However, if the number of Directors is reduced below the number required for a quorum, the remaining Directors may act only for the purpose of filling the vacancies to the extent necessary to bring their number up to that required for a quorum or to convene a General Meeting.

16.8 *Director attending and voting by proxy*

- (a) A Director may attend and vote by proxy at a Directors' meeting in accordance with the Corporations Act if the proxy:
 - (i) is another Director;
 - (ii) is instructed in writing by the appointer of the manner in which the proxy is to vote; and
 - (iii) has been appointed in writing signed by the appointer.

- (b) The appointment must be for a particular meeting.

16.9 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, 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, 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 (where the notice is given to the email address ordinarily used by the Director or delivered to the Director's normal place of business) 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 a meeting of Directors.

16.10 Election of Chair and Deputy Chair

- (a) Subject to this clause 16.10, the Directors must have regard to any requirements or objectives that the Australian Sports Commission has for gender composition, elect from their number a Chair and Deputy Chair (or equivalent) by a majority vote (and a Director participating in such a vote will not have a casting vote):
 - (i) at the first Directors' meeting after the AGM; or
 - (ii) at any meeting of Directors at which a Chair or Deputy Chair resigns; or
 - (iii) at any meeting of Directors at which a Chair is removed under clause 14.13 or 16.10(c),
- (b) The Directors elected to the offices of Chair of Directors and Deputy Chair under clause 16.10(a) will respectively remain Chair of Directors and Deputy Chair until the next Annual General Meeting, and the Chair shall chair any Board meeting.
- (c) Despite clause 16.10(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 Deputy Chair shall be chair of the meeting, or if any of (i) - (iii) apply equally to the Deputy Chair, the Directors present may elect one of their number to be chair of the meeting.

16.11 Circulating resolutions

- (a) The Directors may pass a resolution without a Directors' meeting being held if the resolution is circulated to all Directors and all Directors who are entitled to vote on the resolution 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.
- (c) The resolution is passed when the last Director signs the required document.

16.12 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.

16.13 Directors' Interests

- (a) A Director shall declare to the Board that Director's interest in any matter in which any material personal interest or related party transaction arises as defined by the Corporations Act.
- (b) A Director referred to in clause 16.13(a) must absent himself or herself from discussion of such matter and shall not be entitled to vote in respect of such matter.
- (c) In the event of any uncertainty in this regard, the issue shall immediately be determined by a vote of the Directors or, if this is not possible, the matter shall be adjourned or deferred to the next meeting.
- (d) The CEO shall maintain a register of declared interests.

16.14 Minutes

The Directors must cause minutes of meetings to be made and kept according to the Corporations Act.

17 Telecommunication Meetings of the Company

17.1 Telecommunication meeting

- (a) A General Meeting or a Directors' meeting may be held by means of a telecommunication meeting, provided that:
 - (i) the number of Constituent Association Members or Directors (as applicable) participating is not less than a quorum required for a General Meeting or Directors' meeting (as applicable); and
 - (ii) the meeting is convened and held in accordance with the Corporations Act.
- (b) All provisions of this Constitution relating to a meeting apply to a telecommunication meeting in so far as they are not inconsistent with the provisions of this clause 17.

17.2 Conduct of telecommunication meeting

The following provisions apply to a telecommunication 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 must announce his or her presence to all

other persons taking part in the meeting;

- (d) a person may not intentionally leave a telecommunication 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 telecommunication meeting unless that person has previously notified the chair of leaving the meeting; and
- (f) a minute of proceedings of a telecommunication 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.

18 Chief Executive Officer

18.1 *Appointment of CEO*

The Directors must appoint a CEO.

18.2 *Powers, duties and authorities of CEO*

- (a) The CEO holds office on the terms and conditions (including as to 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 is subject at all times to the control of the Directors.
- (c) The CEO's role will be to implement the strategies, plans and policies approved by the Directors and will be responsible for the management and direction of the Company and its finances.

18.3 *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.

18.4 *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) undertake any other powers and responsibilities which the Directors consider appropriate to delegate to the CEO.

18.5 CEO to attend meetings

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

19 Company Secretary

19.1 Appointment of Company Secretary

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

19.2 Suspension and removal of Company Secretary

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

19.3 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, determined by the Directors.

20 Committees

20.1 Committees

The Directors may delegate any of their powers to Committees consisting of those persons they think fit (including Directors, individuals and consultants)

20.2 Establishment of Committees

- (a) The Board will establish and maintain:
 - (i) a Nominations Committee (see Clause 27);
 - (ii) Committee(s) to oversight financial, audit and risk management;
 - (iii) a Committee to oversight honours and awards that are bestowed by the Company; and
 - (iv) any other Committee(s) deemed necessary from time-to-time to support the effective functioning of the organisation.

20.3 Gender Requirements

In considering the appointment of Committee Members, the Directors must have regard to any requirements or objectives that the Australian Sports Commission has for gender composition of sub-committees of national sporting organisations.

20.4 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.
- (b) Powers delegated to and exercised by a Committee are taken to have been exercised by the Directors.
- (c) The Directors may revoke or vary any power delegated to a Committee at any time in their absolute discretion.

20.5 *Committee meetings*

Committee meetings are governed by the relevant charter for the Committee, or in the absence of a charter by the provisions of this Constitution dealing with Directors' meetings, as far as they are capable of application.

21 By-Laws

21.1 *Making and amending By-Laws*

- (a) In addition to the By-Laws made under clause 7.3, 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 may amend, repeal and replace those By-Laws.
- (b) Interpretation of the By-Laws is solely the province of the Directors.

21.2 *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.

22 Inspection of Records

22.1 *Right of the Members to Inspect Records*

Members shall have the right to inspect documents of the Company as permitted by the Corporations Act.

23 Accounts

23.1 *Accounting Records*

The Directors will cause proper accounting and other records to be kept and will distribute copies of financial statements as required by the Corporations Act.

23.2 *Auditor*

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 Corporations Act.

24 Service of Documents

24.1 *Document includes notice*

In this clause 24, document includes a notice.

24.2 *Methods of service on a Member that is not a Constituent Association 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 electronic address nominated by the Member.

24.3 *Methods of service on the Company or Constituent Association Member*

A document may be given to the Company or a Constituent Association Member:

- (a) by delivering it to their registered office;
- (b) by sending it by post to their registered office; or
- (c) by sending it to an electronic address nominated by the Company or Constituent Association Member.

24.4 *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 seventh business day after the date of its posting.

24.5 *Electronic transmission*

If a document is sent by electronic transmission, delivery of the document is taken:

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

25 Indemnity

25.1 *Indemnity of officers*

Every person who is or has been:

- (a) a Director;
- (b) a CEO; or
- (c) a Company Secretary,

is entitled to be indemnified out of the property of the Company against:

- (d) every liability incurred by the person in that capacity (except a liability for legal costs); and
- (e) 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 person becomes involved because of that capacity,

unless:

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

25.2 Insurance

The Company must pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring a person who is or has been a Director, Company Secretary or CEO (Indemnified Officer) against liability incurred by the person in that capacity, including a liability for legal costs, unless:

- (a) the liability arises from actions which are:
 - (i) fraudulent; or
 - (ii) outside the scope of any delegated authority;
- (b) the Company is forbidden by statute to pay or agree to pay the premium; or
- (c) the contract would, if the Company paid the premium, be made void by statute.

25.3 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 25 on the terms the Directors think fit (as long as they are consistent with clause 25.1).

26 Winding Up

26.1 Contributions of Members on winding up

- (a) Each 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.

26.2 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 Constituent Association Members at or before the time of dissolution or, failing that determination, by a judge who has or acquires jurisdiction in the matter.

27 Nominations Committee

27.1 *Nominations Committee Charter*

The Board will establish a Nominations Committee.

27.2 *Purpose of the Nominations Committee*

The purpose of the Nominations Committee is to:

- (a) consider the applications of persons who apply for vacant Elected Director positions to determine Eligible Director Candidates; and
- (b) advise the Board and the Constituent Association Member in relation to:
 - (i) the skill needs of the Board; and
 - (ii) their assessment of the Eligible Director Candidates, in accordance with the provisions of this clause 27.

27.3 *Composition of the Nominations Committee*

- (a) The Nominations Committee shall:
 - (i) Be comprised of five members, being:
 - (A) two independent members one of whom will chair the Committee;
 - (B) two members appointed by the Constituent Association Members; and
 - (C) one Director;
 - (ii) of these five members, at least two will be women.
- (b) The Nominations Committee will be comprised of a balance of people:
 - (i) with appropriate qualifications, experience and skills to make determinations and advise the Constituent Association Members and the Board on the most appropriate Board candidates;
 - (ii) with an understanding of Basketball in Australia and the role of the Company; and
 - (iii) who are independent Nominations Committee members as defined in clause 27.3(c).
- (c) Each independent member of the Nominations Committee will be an individual with no association or connection to organised Basketball in Australia and no active role in basketball or in businesses that benefit financially from basketball for at least two years prior to becoming a Nominations Committee member.

27.4 *Chair of the Nominations Committee*

A Nominations Committee chair will be appointed by the Board from the independent members of the Nominations Committee appointed under clause 27.3(a)(i)(A). The Board will consult with the Constituent Association Member presidents or chairs for the purpose of selecting the Nominations Committee chair.

27.5 *Term of Office*

The term of office for members of the Nominations Committee will be a period of two years and may be extended for up to a maximum of four two-year terms.

27.6 Appointment of the Two Constituent Association Member Nominated Committee Members

- (a) The Board shall advise the Nominations Committee chair of the two Constituent Association Member nominated members of the Nominations Committee once these names are known.
- (b) The selection of the two Constituent Association Member-nominated Nominations Committee members should be agreed at a meeting of the Constituent Association Members.

27.7 Functioning of the Committee

- (a) The Nominations Committee will maintain and publish to the Board and each Constituent Association Member and on the Company's website a document that sets out:
 - (i) a matrix of the skills and attributes that it considers should be held by the various members of the Board (Board Skills and Attributes Matrix). The Board Skills and Attributes Matrix will include both technical skills and personal attributes that should be held by Directors; and
 - (ii) any core competencies that it considers that any Eligible Director Candidate should have.
- (b) Prior to each AGM, the Board must request the Nominations Committee to:
 - (i) identify the members of the BA Board who are retiring at the AGM;
 - (ii) review the skill base of the members of the BA Board that are continuing in office as against the Board Skills and Attributes Matrix that it has published in accordance with clause 27.7(a); and
 - (iii) determine, by reference to this review and the Board Skills and Attributes Matrix:
 - (A) the skills that would best assist the Board to perform its duties if held by Eligible Director Candidates; and
 - (B) to publish to the Board a list of the relevant skills (the Elected Director Criteria) in accordance with its determination.
- (c) The Nominations Committee must consider each candidate for election or appointment as a Director that it receives from the CEO.
- (d) The Nominations Committee must consider each Elected Director Candidate by assessing:
 - (i) the candidate against the Elected Director Criteria;
 - (ii) the commitment of the candidate to a strong governance regime for Basketball in Australia;
 - (iii) the commitment of the candidate to the Company developing policies and strategies for Basketball;
 - (iv) whether the candidate has been involved in activities which could, or could reasonably be perceived to, materially interfere with the candidate's ability to act in the best interests of the Company;
 - (v) whether the candidate is free from any interest and any relationship which could, or could reasonably be perceived to, materially interfere with the nominee's ability to act in the best interests of the Company;
 - (vi) whether the election or appointment of the candidate as a Director will enhance the balance and diversity of skills among Directors; and

- (vii) the effect that the election or appointment of the candidate as a Director will have on the objective of the Company to have regard to any requirements or objectives that the Australian Sports Commission has for gender composition of the Board of National Sporting Organisations in light of the then gender composition of the Board.
- (e) The Nominations Committee must, at the conclusion of its consideration under clause 27.7(d), in its absolute discretion and acting in good faith rank the candidates in order of the Nomination Committee's assessment of each of them with the candidate that they consider is the best candidate to be ranked number 1.
- (f) The Nominations Committee must include each Elected Director Candidate in the list of ranked candidates other than a candidate who:
 - (i) would otherwise be disqualified from holding office under the Corporations Act;
 - (ii) is, in the reasonable opinion of the Nominations Committee, an unsuitable candidate; or
 - (iii) does not, in the reasonable opinion of the Nominations Committee, meet, in a material respect, any of the skills and attributes needs of the Board.
- (g) The Nominations Committee must publish to the Board:
 - (i) the list of ranked candidates, each of whom is an Eligible Director Candidate; and
 - (ii) the name of any candidate it has excluded under clause 27.7(f).
- (h) The Nominations Committee must consider each Appointed Director proposed by the Board by assessing:
 - (i) whether the candidate has been involved in activities which could, or could reasonably be perceived to, materially interfere with the candidate's ability to act in the best interests of the Company; and
 - (ii) whether the candidate is free from any interest and any relationship which could, or could reasonably be perceived to, materially interfere with the nominee's ability to act in the best interests of the Company.
- (i) The Nominations Committee is not required to provide any reasons for its decisions or exclusions.
- (j) The Nominations Committee may request the Company to provide or obtain any information that the Nominations Committee requires in respect of a nominee, or a person proposed to be appointed as a Director.
- (k) No Director may participate in the meetings and deliberations of the Nominations Committee or in any of its processes, other than the Director member appointed in accordance with clause 27.3(a)(i)(C).
- (l) A decision made by the Nominations Committee under this clause is final and not subject to challenge.