

Constitution

of

Rockingham Basketball and Recreation Association Incorporated

(ABN 77 837 720 850)



Contents

1. Definitions
2. Interpretation
3. Association
4. Affiliation
5. Objects
6. Structure
7. Powers of Association
8. Membership
9. Disciplinary Action
10. Dispute Resolution
11. Mediation
12. The Board
13. Duties of the Board
14. Convening Board Meetings
15. Meetings of the Board
16. Delegation
17. General Meetings of the Association
18. Conduct of General Meetings
19. Quorum
20. Financial Matters
21. Records
22. By-Laws
23. General Matters
24. Alteration of Constitution

1. Definitions

Terms used in the Associations Incorporation Act

- 1.1 In this constitution, subject to clauses 1.2 and unless the context requires otherwise, terms used in any provision of this constitution that deals with a matter that is dealt with by a particular section of the Association Incorporation Act have the same meanings as in that section of the Associations Incorporation Act.

Specific definitions

- 1.2 The following definitions apply in this constitution:

Act means the Associations Incorporation Act 2015.

AGM means the Annual General Meeting of the Association referred to in clause 17.

Annual Membership Fee is the sum of money determined by the Board that each Member must pay to maintain their membership for a twelve (12) month period.

Associate Member means a Member with the rights referred to in clause 8.23.

Association means the incorporated Association to which this constitution applies referred to in clause 3.1.

Basketball WA means the controlling body for the sport of basketball in Western Australia.

Board means the Members elected to the Board, acting as a Board for the management of the Association in accordance with the Act and this constitution.

Board Member means a member elected to the Board of the Association from time to time.

Books means the records or documents of the Association, including, but not limited to 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.

Business Day means a day (other than a Saturday, Sunday or public holiday) when banks in the state or territory in which the Associations principal place of business is located are open for business.

By-laws means by-laws made by the Association under clause 22.

Commissioner means the person for the time being designated as the Commissioner under section 153 of the Act;

Delegate means a delegate appointed by the Board under clause 16.

Department means the government department with responsibility for administering the

Act.

Dispute means a disagreement relating to the rights, obligations, or conduct of members under this Constitution, but does not include disciplinary action, complaints, allegations of misconduct, operational matters or matters subject to a separate policy adopted by the Board.

Due Date means a date selected by the Board when membership fees are payable, as per clause 8.46.

Financial records means:

- (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 report, of a tier 2 association or a tier 3 association, has the meaning given in section 63 of the Act.

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

Financial year, of the Association, has the meaning given in clause 20.1.

General Manager means a person who is appointed as General Manager of the Association by the Board and on the terms laid down by the Board.

General Meeting means a meeting of the Association that all Members are entitled to receive notice of and to attend.

Governmental Agency means any government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity whether foreign, federal, state, territorial or local.

Liability includes a present, prospective, future or contingent liability.

Life Member means a person who is a Life Member under clause 8.2.

Local Government Authority means a local government established under the Local Government Act 1995.

Member means a person (including a body corporate) who is an Ordinary Member, Life Member or an Associate Member of the Association.

NBL1 means the semi-professional basketball league in Australia run by the National Basketball League named NBL1.

Non-Delegable duty means a duty imposed on the Board, or any particular officeholder, by the Act or another written law.

Office Holders means a group of Members elected to the Board as an Office Holder of the Association as referred to in clause 12.5.

Ordinary Board Member means a person who is a Board Member but is not an Office Holder of the Association as referred to in clause 12.3(b).

Poll means voting conducted in written form (as opposed to a show of hands).

President means the Board Member elected at the AGM by the relevant voting Members to hold the office of President of the Association in accordance with clause 12 and, unless the context requires otherwise, includes any acting President of the Association.

Proxy means an ordinary Member or Board Member who has been given the authority to represent someone else.

Region means the geographical area comprising the districts of gazetted regions of the Cities of Kwinana, Rockingham and surroundings as determined by the Board.

Register means the register of Members of the Association kept by the Association in accordance with section 53 of the Act.

Related Association or Body Corporate has the meaning given to the term “related body corporate” in the Corporations Act.

Representative means a person or people chosen to act or speak on behalf of a wider group.

RKCC means the Rockingham Kwinana Chamber of Commerce.

Rules means the provisions and terms of the Association as recorded in this Constitution for the time being and as amended from time to time in accordance with this Constitution.

SBL means the semi-professional state basketball league in Western Australia run by Basketball Western Australia.

Secretary means the Board Member elected at the AGM by the relevant voting Members to hold the office of Secretary of the Association in accordance with clause 12 and, unless the context requires otherwise, includes any acting Secretary of the Association.

Special General Meeting means a General Meeting of the Association other than the Annual General Meeting.

Special Resolution means a resolution passed by the Members at a General Meeting in accordance with section 51 of the Act.

Staff means the people employed and paid to run the operations of the Association.

Treasurer means the Board Member elected at the AGM by the relevant voting Members to hold the office of Treasurer of the Association in accordance with clause 12 and, unless the context requires otherwise, includes any acting Treasurer of the Association.

Vice-President means the Board Member elected at the AGM by the relevant voting Members to hold the office of Vice- President of the Association in accordance with clause 12 and, unless the context requires otherwise, includes any acting Vice-President of the Association.

2. Interpretation

2.1 The following rules of interpretation apply in this constitution:

- (a) Headings in this constitution are for convenience only and do not affect its interpretation or construction.
- (b) Where any word or phrase is defined, any other part of speech or other grammatical form of that word or phrase has a cognate meaning.
- (c) References to recitals, clauses, subclauses, paragraphs, annexures or schedules are references to recitals, clauses, subclauses, paragraphs, annexures and schedules of or to this constitution.
- (d) References to any statute, proclamation, rule, code, regulation or ordinance includes any amendment, consolidation, modification, re-enactment or reprint of it or any statute, proclamation, rule, code, regulation or ordinance replacing it.
- (e) A reference to a law including any regulations and instruments made under that law.
- (f) An expression importing a natural person includes any individual, corporation or other body corporate, partnership, trust or association and any Governmental Agency and that person's personal representatives, successors, permitted assigns, substitutes, executors and administrators.
- (g) A reference to writing includes any communication sent by post, facsimile or email.
- (h) A reference to time refers to time in the state or territory in which the Associations principal place of business is situated, and time is of the essence.
- (i) The meaning of general words is not limited by specific examples introduced by "include", "includes", "including", "for example", "in particular", "such as" or similar expressions.
- (j) A reference to any thing is a reference to the whole and each part of it.
- (k) A reference to a group of people is a reference to all of them collectively and to each of them individually; and
- (l) Unless the context requires otherwise:
 - (i) words in the singular include the plural and vice versa; and
 - (ii) a reference to one gender includes a reference to the other genders.

3. Association

- 3.1 The name of the Association is "Rockingham Basketball and Recreation Association Incorporated" trading as The Rockingham Flames.
- 3.2 The registered office is located at Corner Dixon Road and Goddard Street, Rockingham in the State of Western Australia.
- 3.3 The Association colours are red PM6186C; Black and white, or as determined from time to time by the Board.
- 3.4 The Association logo shall be as determined from time to time by the Board.

4. Affiliation

The Association shall be affiliated with:

- (a) Basketball WA;
- (b) Basketball Australia;
- (c) NBL1;
- (d) NBL1 West;
- (e) Any other corporations or Associations that align with the Associations' goals or objectives as agreed by the Board from time to time.

5. Objects

The objects for which the Association is established are to:

- (a) provide recreational and sporting facilities for the betterment of Members;
- (b) further the objects of the Association;
- (c) promote further interest in basketball and sports generally in the City of Rockingham, the City of Kwinana and the Rockingham region generally;
- (d) conduct and govern recreational activities and competitions in the Rockingham region;
- (e) amalgamate, cooperate, or affiliate with any Association, society or other body having objects wholly or partly like those of the Associations;
- (f) provide for participation of basketball teams representative of the region in competitions at local, state, or national level; and
- (g) act either alone or with other individuals, bodies, associations, organisations, or business, for the betterment of sport and recreation.

6. Structure

6.1 The Association is an autonomous body governed by its Members, led by an elected group of Office Holders and Board Members, and managed by the Staff.

6.2 The Association's leadership consists of the Office Holders and Board, responsible for governance, and the General Manager, responsible for operational management, and any other person(s) the Board determines necessary.

6.3 Office Holders

The functions of the Office holders are, in accordance with these Rules, to:

- (a) President - provide overall leadership, represent the Association, and preside over meetings, supervise and support the General Manager and Staff;
- (b) Vice President - support the President and assume their duties when the President is unavailable;
- (c) Secretary - maintain records, minutes and official correspondence of the Association;
- (d) Treasurer - oversee the financial management of the Association.

6.4 The Board

The Board is composed of the Office Holders and Ordinary Board Members elected by the Membership. The Board shall, in accordance with these Rules:

- (a) provide strategic direction and governance for the Association;
- (b) ensure compliance with the Association's objectives, constitution, and policies;
- (c) support the General Manager and Staff;
- (d) represent the interests of the Members in decision-making.

6.5 Operations

The Operations of the Association are led by the General Manager, who is responsible for the day-to-day management of the Association, and supported by Staff. General Manager shall, in accordance with these Rules and the direction of the Board:

- (a) implement the strategic direction, policies and decisions of the Board;
- (b) manage the day-to-day operations, programs and activities of the Association;
- (c) oversee and direct Staff, including recruitment, supervision and performance management;
- (d) manage the financial and administrative functions of the Association within approved budgets and delegations;
- (e) provide advice and regular reports to the Board on operational performance, risks and opportunities;
- (f) ensure the effective and efficient use of the Association's resources.

Staff shall, under the direction of the General Manager:

- (a) support the delivery of the Association's programs, services and activities;
- (b) perform duties as assigned by the General Manager;
- (c) act in the best interests of the Association and in accordance with its policies and procedures.

7. Powers of Association

The powers conferred on the Association are such that the Association may do all things necessary or convenient for carrying out its objects and purposes, and may:

- (a) acquire, hold, deal with, and dispose of any real or personal property;
- (b) open and operate bank accounts;
- (c) invest its money or interests:
 - i. In any security in which trust monies may lawfully be invested; or
 - ii. In any manner authorised by the rules of the Association;
- (d) borrow money upon such terms and conditions as the Association thinks is fit;
- (e) give such security for the discharge of liabilities incurred by the Association as the Association thinks is fit;
- (f) appoint agents to transact any business of the Association on its behalf;
- (g) enter into any other contract it considers necessary or desirable;
- (h) act as trustee and accept and hold real and personal property upon trust, but does not have power to do any act or thing as a trustee that, if done otherwise than as a trustee, would contravene this Act or the rules of the Association;
- (i) may affiliate with bodies whose objectives are similar or conducive to the attainment of their objectives; and
- (j) may undertake project activities including developing and managing infrastructure and facilities.

8. Membership

Eligibility

- 8.1 Any individual who supports the objects and purposes of the Association.
- 8.2 An individual who has not reached the age of 18 years is not eligible to apply for a class of membership that confers full voting rights.

Ineligibility

- 8.3 An individual is not eligible for membership if their membership of the Association has previously been revoked, unless the Board determines otherwise.

The Board may refuse an application for membership if it reasonably considers that the individual:

- 8.4 has acted in a manner contrary to the objects, interests or reputation of the Association; or
- 8.5 would otherwise be unsuitable for membership having regard to the Association's purposes and values.

Applying for Memberships

- 8.6 A person who wants to become an Ordinary Member or Associate Member must apply in writing to the Association by completing the application form as approved by the Board from time to time, and provide that form to the address or person identified as detailed on the form.
- 8.7 The application must include the applicant's relevant identifying information and current contact details.
- 8.8 The application must be signed and dated by the applicant.
- 8.9 The applicant must utilise the correct form, and regardless of form, specify in the application the class of membership to which the application relates.
- 8.10 A person who wants to become a seasonal playing Member must register via the application form or registration tool utilised by the Association.

Dealing with Membership Applications

- 8.11 The Board, or appointed Delegate, must consider each application for Ordinary or Associate membership under clause 8.6, and decide whether to accept or reject the application.
- 8.12 Subject to clause 8.13, the Board, or appointed Delegate, must consider applications in the order in which they are received by the Association.
- 8.13 The Board, or appointed Delegate, may delay its consideration of an application if the Board considers that any matter relating to the application needs to be clarified by the applicant or that the applicant needs to provide further information in support of the application.
- 8.14 The Board must not accept an application unless the applicant:
- (a) is eligible in accordance with clause 8.1 and 8.2; and
 - (b) has applied in accordance with clauses 8.3 – 8.10.
- 8.15 The Board may reject an application even if the applicant:
- (a) is eligible under clause 8.1 -8.2; and
 - (b) has applied in accordance with clauses 8.3 – 8.10.
- 8.16 The Board must notify the applicant of the Board's decision to accept or reject the application as soon as practicable after making the decision.

- 8.17 If the Board rejects the application, the Board is not required to give the applicant its reasons for doing so.

Becoming a Member

- 8.18 An applicant for Membership of the Association becomes a Member when:
- (a) the Board, or appointed Delegate, accepts the application; and
 - (b) the applicant pays any membership fees payable to the Association clause 8.46.

Classes of Membership

- 8.19 The Association consists of Ordinary Members and any Associate Members provided for in accordance with clause 8.20, and any Life Members provided for in accordance with 8.34 - 8.36.
- 8.20 The Association may have any class of Ordinary Membership or Associate Membership approved by resolution at a General Meeting.
- 8.21 An individual who has not reached the age of 18 years is only eligible to be an Associate Member.
- 8.22 An individual who is a Member only in their capacity as a registered seasonal player is only eligible to be an Associate Member.
- 8.23 A person can only belong to one class of Membership - Ordinary or Associate Membership.
- 8.24 An Ordinary Member has full voting rights and any other rights conferred on their class of Ordinary Membership by these rules or approved by resolution at a General Meeting or determined by the Board.
- 8.25 An Associate Member has the rights referred to in clause 8.24 other than full voting rights.
- 8.26 The number of Members of any class is not limited unless otherwise approved by resolution at a General Meeting.

Register of Members

- 8.27 The Secretary or Delegate, is responsible for the requirements imposed on the Association under section 53 of the Act to maintain the register of Members and record in that register any change in the Membership of the Association.
- 8.28 In addition to the matters referred to in section 53(2) of the Act, the register of Members must include the class of Membership (if applicable) to which each Member belongs and the date on which each Member becomes a Member.
- 8.29 The register of Members must be kept at the Association's office, or at another place determined by the Board.
- 8.30 A Member who wishes to inspect the register of Members, must contact the Secretary or delegated person to make the necessary arrangements.

- 8.31 The Board may require the Members to provide a statutory declaration setting out the purpose for which the copy or extract is required and declaring that the purpose relates to the affairs of the Association if:
- (a) a Member inspecting the register of Members wishes to make a copy of, or take an extract from, the register under section 54(2) of the Act; or
 - (b) a Member makes a written request under section 56(1) of the Act to be provided with a copy of the register of Members.

Privileges and Obligations

- 8.32 Members of the Association shall have the rights and privileges of membership relevant to their class or nature of membership including:
- (a) If applicable, the right to attend and vote at all General Meetings of the Association;
 - (b) If applicable, the right to nominate for and participate in the election of the Board;
 - (c) the obligation to uphold and further the values and objects of the Association.
- 8.33 All Members, including Board Members, must comply with the Association's Code of Conduct, as adopted and amended from time to time by the Board.

Life Membership

- 8.34 Life Membership is an honorary form of membership awarded by the Association in recognition of exceptional service, contribution, or commitment. Unless clause 8.35 applies, Life Membership shall be deemed a form of Associate Membership.
- 8.35 A Life Member may also apply to become an Ordinary Member, and any approval or holding of Ordinary Membership does not affect, limit, suspend, or remove their Life Membership status or entitlements.
- 8.36 For service to be considered as distinguished it must be both a sustained and conspicuous contribution. Additionally, the Member should have served the Association in a position on the Board, or any other designated Board of the Association, or the Member should have represented the Association at a high level in accordance with the Association objects.
- 8.37 Life Members of the Association will be elected in the following manner:
- (a) any suitable candidate (or their nominating sponsor) may submit a nomination to the Board including details of the following items:
 - a) all relevant awards and achievements;
 - b) relevant experience and service to the Association; and
 - c) outstanding achievements with the Association;
 - (b) the Board will consider any nomination for Life Membership of the Association and decide whether to accept or reject the nomination; and
 - (c) if a nomination is accepted by the Board, the nomination shall be proposed at the next Annual General Meeting and subject to a vote by simple resolution to accept or

reject the nomination; or

- (d) Any Player Member who has played 250 SBL or NBL1 games for the Association is eligible to be granted Life Membership. Life Membership shall be conferred by resolution of the Board.

When Membership Ceases

8.38 An individual, corporate body, association, or government body ceases to be a Member when any of the following takes place:

- (a) for a Member who is an individual, the individual dies;
- (b) for a Member who is a body corporate, the body corporate is wound up;
- (c) the Member resigns from the Association in accordance with clause 8.41;
- (d) the Member is expelled from the Association in accordance with clause 9;
- (e) the Member ceases to be a Member in accordance with clause 8.51.

8.39 The Secretary or Delegate 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.

Resignation

8.40 A Member may resign from membership of the Association by giving written notice of the resignation to the Secretary or Delegate.

8.41 The resignation takes effect:

- (a) when the Secretary or Delegate receives the notice; or
- (b) if a later time is stated in the notice, at that later time.

8.42 A person who has resigned from membership of the Association remains liable for any fees that are owed to the Association (the amount owed) at the time of resignation.

8.43 The owed amount may be recovered by the Association in a court of competent jurisdiction as a debt due to the Association.

Rights Not Transferrable

8.44 The rights of a Member are not transferable and end when membership ceases.

Membership Fees

8.45 The Board must determine the entrance fee (if any) and the Annual Membership fee (if any) to be paid for Membership of the Association to maintain their membership for a twelve (12) month period.

- 8.46 The fees determined under clause 8.45 may be different for different classes of membership.
- 8.47 A Member must pay the Annual Membership Fee to the Treasurer, or to another person or entity authorised by the Board to accept payments, by the due date determined by the Board. Payment may be made in person, by electronic transfer, or by any other method approved by the Board.
- 8.48 A Member who has not paid the Annual Membership Fee by the due date shall be deemed unfinancial.
- 8.49 An unfinancial Member may have their rights (including voting rights, eligibility for office, and access to Member benefits) suspended until such time as the outstanding fee is paid in full.
- 8.50 If a Member's Annual Membership Fee remains unpaid for more than three (3) months after the due date, the Member's membership is deemed to have lapsed.
- 8.51 If a person who has ceased to be a Member offers to pay the Annual Membership fee after the period referred to in that clause has expired:
- (a) the Board may, at its discretion, accept that payment; and
 - (b) if the payment is received within six (6) months of the due date, the membership shall continue from the Member's original enrolment date and be reinstated without penalty; and
 - (c) if the payment is received more than six (6) months after the due date, the membership shall be reinstated from the first day of the next calendar month, and an additional administration fee may be applied as determined by the Board.

9. Disciplinary Action

Suspension or expulsion

- 9.1 The Board may decide to suspend a Member's membership or to expel a Member from the Association if:
- (a) the Member contravenes any of these rules;
 - (b) the Member fails to comply with their obligation to further the objects of the Association;
 - (c) the Member acts detrimentally to the interests of the Association; or
 - (d) the Board, acting reasonably, determines that it is in the best interest of the Association.
- 9.2 The Secretary or Delegate, must give the Member written notice of the proposed suspension or expulsion at least 28 days before the Board meeting at which the proposal is to be considered by the Board.
- 9.3 The notice under clause 9.2 must state:
- (a) when and where the Board meeting is to be held;

- (b) the grounds on which the proposed suspension or expulsion is based; and
- (c) that the Member, or the Member's representative, may attend the meeting and will be given a reasonable opportunity to make written or oral (or both written and oral) submissions to the Board about the proposed suspension or expulsion.

9.4 At the Board meeting, the Board must:

- (a) give the Member, or the Member's representative, a reasonable opportunity to make written or oral (or both written and oral) submissions to the Board about the proposed suspension or expulsion;
- (b) give due consideration to any submissions so made; and
- (c) decide:
 - i. Whether or not to suspend the Member's membership and, if the decision is to suspend the membership, the period of suspension; or
 - ii. whether or not to expel the Member from the Association.

9.5 A decision by the Board to suspend the Member's membership or to expel the Member from the Association takes immediate effect.

9.6 The Board must give the Member written notice of the Board's decision, and the reasons for the decision, within 7 days after the Board meeting at which the decision is made.

9.7 A Member whose membership is suspended or who is expelled from the Association may, within fourteen (14) days after receiving notice of the Board's decision in accordance with clause 9.6, give written notice to the Secretary or Delegate:

- (a) lodging an appeal against the decision; or
- (b) requesting the appointment of a mediator under clause 11.
- (c) An appeal under this clause shall be determined by the Members at a General Meeting, and the Member must be given a reasonable opportunity to be heard.

9.8 An appeal under clause 9.7 (a) shall be determined by the Members at a General Meeting, and the Member must be given a reasonable opportunity to be heard.

9.9 If notice is given under clause 9.7 (b), the Member who gives the notice and the Board are the parties to the mediation.

Consequences of suspension

9.10 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.

9.11 When a Member's membership is suspended, the Secretary or Delegate must record in the

register of Members:

- (a) that the Member's membership is suspended;
- (b) the date on which the suspension takes effect; and
- (c) the period of the suspension.

9.12 When the period of the suspension ends, the Secretary or Delegate must record in the register of Members that the Member's membership is no longer suspended.

10. Dispute Resolution

Terms Used

10.1 For the purpose of this clause 10, these terms have the following definition:

- (a) **grievance procedure** means the procedures set out in this clause;
- (b) **party to a dispute** includes a person:
 - i. who is a party to the dispute; and
 - ii. who ceases to be a Member within 6 months before the dispute has come to the attention of each party to the dispute.

Application

10.2 The grievance procedure set out in by these rules applies to disputes:

- (a) between Members of the Association; or
- (b) between one or more Members and the Association.

Parties to attempt to resolve dispute

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

Grievance procedure

10.4 If the parties to a dispute are unable to resolve the dispute between themselves within the time required by clause 10.3, any party to the dispute may start the grievance procedure by giving written notice to the Secretary or Delegate of:

- (a) the parties to the dispute; and
- (b) the matters that are the subject of the dispute.

10.5 Within 28 days after the secretary is given the notice, a Board meeting must be convened to consider and determine the dispute.

10.6 The Secretary or Delegate must give each party to the dispute written notice of the Board meeting at which the dispute is to be considered and determined at least 7 days before the meeting is held.

- 10.7 The notice given to each party to the dispute must state:
- (a) when and where the Board meeting is to be held; and
 - (b) that the party, or the party's representative, may attend the meeting and will be given a reasonable opportunity to make written or oral (or both written and oral) submissions to the Board about the dispute.

- 10.8 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 or Delegate stating that the party:
 - i. does not agree to the dispute being determined by the Board; and
 - ii. requests the appointment of a mediator under clause 11,

the Board must not determine the dispute until the mediation process in clause 11 has concluded.

Determination of Dispute

- 10.9 The Board shall hold a meeting for the purpose of considering and determining the dispute whereat the Board must:
- (a) give each party to the dispute, or the party's representative, a reasonable opportunity to make written or oral (or both written and oral) submissions to the Board about the dispute;
 - (b) give due consideration to any submissions so made; and
 - (c) determine the dispute.
- 10.10 The Board must give each party to the dispute written notice of the Board's determination, and the reasons for the determination, within 7 days after the Board meeting at which the determination is made.
- 10.11 A party to the dispute may, within 14 days after receiving notice of the Board's determination under clause 10.9(c), give written notice to the Secretary or Delegate requesting the appointment of a mediator under clause 11.
- 10.12 If notice is given under clause 10.11, each party to the dispute is a party to the mediation.

11. Mediation

- 11.1 If written notice has been given to the Secretary or Delegate requesting the appointment of a mediator:
- (a) by a Member under clause 9.7 (b); or
 - (b) by a party to a dispute under clause 10.8,

the Association, or parties as appropriate, shall apply the mediation process set out in this clause 11.

Appointment of mediator

11.2 The mediator must be a person chosen:

- (a) if the appointment of a mediator was requested by a Member under 9.7(b), by agreement between the Member and the Board; or
- (b) if the appointment of a mediator was requested by a party to a dispute under clause 10.8, by agreement between the parties to the dispute.

11.3 If there is no agreement for the purposes of clause 11.2, then, subject to clauses 11.3 and 11.4, the Board must appoint the mediator.

11.4 The person appointed as mediator by the Board must be a person who acts as a mediator for another not-for-profit body, such as a community legal centre, if the appointment of a mediator was requested by:

- (a) a Member under clause 9.7 (b); or
- (b) a party to a dispute under clause 10.8;
or
- (c) a party to a dispute under clause 10.12 and the dispute is between one or more Members and the Association.

11.5 The person appointed as mediator by the Board may be a Member or former Member of the Association but must not:

- (a) have a personal interest in the matter that is the subject of mediation; or
- (b) be biased in favour of or against any party to the mediation.

Mediation process

11.6 The parties to the mediation must attempt in good faith to settle the matter that is the subject of the mediation.

11.7 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.

11.8 In conducting the mediation, the mediator must:

- (a) give each party to the mediation every opportunity to be heard;
- (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.

11.9 The mediator cannot determine the matter that is the subject of the mediation.

11.10 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.

- 11.11 Participation in mediation does not limit, waive, or otherwise affect the powers of the Board under this Constitution. The Board retains full authority to exercise its powers and make decisions in accordance with its responsibilities, regardless of the mediation process or any suggestions arising from it.
- 11.12 If the Board rejects the outcome, recommendation, or proposal of a mediator, the Board may do so at its discretion and must notify the Member of its decision. The Board is not bound to adopt the mediator's recommendation.
- 11.13 The costs of the mediation are to be borne by the party or parties who requested the appointment of the mediator, unless the mediator or the Board determines otherwise having regard to the circumstances.

Revocation of earlier determination

11.14 If:

- (a) mediation takes place because a Member whose membership is suspended or who is expelled from the Association gives notice under clause 9.7 (b); 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 Board meeting or General Meeting during the period of suspension or expulsion.

12. The Board

Role of the Board

- 12.1 Subject to the Act, this Constitution, and the By-Laws and any resolution passed at a General Meeting or Special General Meeting, the Board has the power to do all things necessary or convenient to be done for the proper management of the Association.
- 12.2 The Board:
- (a) will manage the Association for the collective and mutual benefit of the Members, and the sport of basketball;
 - (b) will administer the Association in accordance with the Objects;
 - (c) will develop a strategic plan for the Association;
 - (d) will review the Association's performance in achieving its strategic plan objectives;
 - (e) will appoint, manage and dismiss the General Manager as necessary, with such General Manager to report to the Board through the President;
 - (f) will ensure an appropriate risk management framework is in place;
 - (g) will take all reasonable steps to ensure that the Association complies with the Act,

and this Constitution;

- (h) maintain a good working knowledge of this Constitution, the policies of the Association and the duties of all Office Holders and any sub-committees; and
- (i) will ensure the Association meets its financial obligations and remains solvent at all times.

Composition

12.3 The Board consists of:

- (a) the Office Holders of the Association; and
- (b) such number of Ordinary Board Members elected by the Members as is necessary to comply with clause 12.4, and in any event not fewer than one.

12.4 The Board will consist of no less than eight (8) persons, and no more than twelve (12) persons all of whom have been financial Members of the Association prior to the election and during the Annual General Meeting.

12.5 The following are the Office Holders of the Association:

- (a) the President;
- (b) the Vice-President;
- (c) the Secretary;
- (d) the Treasurer.

12.6 A person may be a Board Member if the person is:

- (a) an individual who has reached 18 years of age; and
- (b) an Ordinary Member.

12.7 A person must not hold 2 or more of the Offices mentioned in clause 12.5 at the same time.

12.8 A person is prohibited from sitting on the Board of the Association (without prior approval from the Commissioner) if they:

- (a) are undischarged bankrupt or are their affairs are under insolvency laws;
- (b) have, in the 12 years prior to applying to the Board, have been convicted on an offence in connection with the promotion, formation or management of a body corporate;
- (c) have, in the 12 years prior to applying to the Board, been convicted of an offence involving fraud or dishonesty punishable on conviction of at least three months or more imprisonment; or
- (d) have been convicted of an offence under Division 3 (the duties of officers' provisions) or section 127 (the duty with respect to incurring debt) of the Act.

12.9 A Member becomes a Board Member if the Member:

- (a) is elected to the Board at a General Meeting; or
- (b) is appointed to the Board by the Board to fill a casual vacancy under clause 12.47.

Nomination of Office Holders and Ordinary Board Members

12.10 At least 42 days before an Annual General Meeting, the Secretary or Delegate must send written notice to all the Members:

- (a) calling for nominations for election to the Board; and
- (b) stating the closing date and time and the method of lodgment for nominations, to comply with clause 12.16.

12.11 A Member is eligible to be nominated for election to the position of Office Holder or Ordinary Board Member only if they are a current financial Member of the Association at the time of nomination and remain financial throughout the election process.

12.12 A Member who wishes to be considered for election must lodge a nomination with the Secretary or Delegate, no later than twenty-eight (28) days before the Annual General Meeting, in the form and manner prescribed by this clause.

12.13 A valid nomination under clause 12.12 must include:

- (a) a completed nomination form approved by the Board;
- (b) the nominee's written consent to the nomination; and
- (c) statement by another Member in support of the nomination.

For the purposes of this clause, "in writing" includes electronic communications and electronic signatures, and nominations may be lodged by electronic means to the Secretary or Delegate, by the stated closing time.

12.14 A Member may nominate for one specified Office Holder position or to be an Ordinary Board Member.

12.15 A Member whose nomination does not comply with this rule is not eligible for election to the Board unless the Member is nominated under clause 12.21.

12.16 Unless a different closing time is stated in the notice under clause 12.10(b), nominations under clause 12.10 must be received by 5:00 pm (AWST) on the day that is twenty-eight (28) days before the Annual General Meeting. Nominations received after the closing time are invalid.

12.17 As soon as practicable after the close of nominations, and in any event no later than fourteen (14) days before the Annual General Meeting, the Secretary or Delegate, must:

- (a) verify eligibility and compliance of each nomination;
- (b) circulate to all Members the list of valid nominees and the position each is seeking; and
- (c) include that list in the meeting papers for the Annual General Meeting.

- 12.18 If the Board has approved a standard format for candidate statements, the Secretary or Delegate, may circulate any compliant statements with the list of nominees.

Election of Office Holders

- 12.19 Every second (alternating) Annual General Meeting, a separate election must be held for the positions of Office Holder of the Association. To ensure continuity of management:

- (a) The President and Secretary shall be elected in the same year; and
- (b) The Vice President and Treasurer shall be elected in the alternate year.

Each Office Holder shall hold office for a term of two (2) years.

- 12.20 If there is no nomination for a position, the President of the meeting may call for nominations from the Ordinary Members at the meeting.

- 12.21 If only one Member has been nominated for a position, the President of the meeting must declare the Member elected to the position.

- 12.22 If more than one Member has been nominated for a position, the Ordinary Members at the meeting must vote in accordance with procedures that have been determined by the Board to decide who is to be elected to the position.

- 12.23 Each Ordinary Member present at the meeting may vote for one Member who has been nominated for the position.

- 12.24 A Member who has been nominated for the position may vote for himself or herself.

- 12.25 On the Member's election, the new President of the Association may take over as the President of the meeting.

Election of Ordinary Board Members

- 12.26 If the number of Members nominating for the position of Ordinary Board Member is not greater than the number of positions to be filled, the President of the meeting:

- (a) must declare each of those nominees elected; and
- (b) may call for further nominations from the floor of the meeting to fill any remaining vacancies.

- 12.27 A Member who has been nominated for election as an Ordinary Board Member is entitled to vote in that election.

Transition

- 12.28 At the first election following the adoption of this Constitution:

- (a) one half of the Board positions (or as close as practicable to one-half) shall be elected for an initial term of one (1) year; and
- (b) the remaining Board positions shall be elected for a term of two (2) years.

- 12.29 At the conclusion of this transition period, all Board positions shall thereafter be elected for two (2) year terms.

Term of Office

- 12.30 The term of office of a Board and Office Holder Member begins when the Member:
- (a) is elected at an Annual General Meeting or under clause 12.39; or
 - (b) is appointed to fill a casual vacancy under clause 12.47.
- 12.31 Subject to clause 12.39, a Board Member or Office Holder holds their position on the Board until it is declared vacant at the second Annual General Meeting following their election.
- 12.32 Board Members shall likewise be elected for terms of two (2) years.
- 12.33 There shall be no limit on the number of consecutive terms a Member may serve, provided they are duly elected or re-elected in accordance with this Constitution. Notwithstanding the foregoing, the Members in General Meeting may, by Special Resolution, prescribe a limit on the number of consecutive terms that may be served in any office.
- 12.34 In the event that the President shall not serve out their full term, the Vice- President shall succeed to the unexpired remainder of the President's term, and a casual vacancy can be called for the Vice President, until the next Annual General Meeting.
- 12.35 If any Board Member is unable to serve out their full term, the Board may, at its discretion, appoint an interim successor to hold office until the next Annual General Meeting, at which time the position shall be filled in accordance with this Constitution.
- 12.36 If the vacated Board Member position carried a remaining term of more than one (1) year, the Member elected at that Annual General Meeting shall serve for the balance of that term.
- 12.37 If the vacated position carried a remaining term of one (1) year or less, this shall be recognised at the Annual General Meeting, and the position shall be filled for a new full term in accordance with this Constitution.
- 12.38 Any contingency arising from a vacancy on the Board not otherwise provided for in this Constitution shall be dealt with by the Board until the next Annual General Meeting.

Staggered Elections

- 12.39 To ensure continuity of governance, elections for Board positions shall be conducted on a staggered basis so that, as far as practicable, approximately one-half of the Board positions fall vacant at each Annual General Meeting.

Resignation and removal from office

- 12.40 A Board Member may resign from the Board by written notice given to the Secretary or Delegate, or, if the resigning Member is the Secretary, given to the President.
- 12.41 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.
- 12.42 At a General Meeting, the Association may by resolution:

- (a) remove a Board Member from office; and
- (b) elect a Member who is eligible to fill the vacant position.

12.43 A Board Member who is the subject of a proposed resolution under clause 12.42 may make written representations (of a reasonable length) to the Secretary or President and may ask that the representations be provided to the Members.

12.44 The Secretary or President may give a copy of the representations to each Member or, if they are not so given, the Board Member may require them to be read out at the General Meeting at which the resolution is to be considered.

Cessation of Board Membership

12.45 A person ceases to be a Board Member if the person:

- (a) dies or otherwise ceases to be a Member; or
- (b) resigns from the Board or is removed from office under clause 12.42(a); or
- (c) becomes ineligible to accept an appointment or act as a Board Member under section 39 of the Act.
- (d) becomes permanently unable to act as a Board Member because of a mental or physical disability; or
- (e) fails to attend 3 consecutive Board meetings, of which the person has been given notice, without having notified the Board that the person will be unable to attend.

12.46 When a person ceases to be a Member of the Association's Board they must, as soon as practicable after their membership ceases, deliver to a continuing Member of the Board all relevant documents, records, or information they hold belonging to the Association, or pertaining to the Association's affairs, or management thereof.

Casual Vacancies

12.47 The Board may appoint a Member who is eligible to fill a position on the Board in accordance with this Constitution.

12.48 If the position of Secretary becomes vacant, the Board must appoint a Member who is eligible to fill the position within 14 days after the vacancy arises.

12.49 Subject to the requirement for a quorum under clause 19, the Board may continue to act despite any vacancy in its membership.

12.50 If there are fewer Board Members than required for a quorum under clause 19, the Board may act only for the purpose of:

- (a) appointing Board Members under this rule; or
- (b) convening a General Meeting.

Validity of Acts

12.51 The acts of a Board or subcommittee, or of a Board Member or Member of a subcommittee,

are valid despite any defect that may afterwards be discovered in the election, appointment or qualification of a Board Member or Member of a subcommittee.

Payment to Board Members

- 12.52 Board of Management Members are voluntary positions, however any payment to Board Members for reasonable out of pocket expenses for approved business activities may be authorised by a resolution of the Association.
- 12.53 Where a Member of the Board also holds a position with an NBL1 team, such as Coach or Assistant Coach, they may submit a request to the Board for payment for that role. Any such payment must be considered and approved by the Board in accordance with the Association's conflict of interest provisions and relevant policies.

13. Duties of the Board

13.1 Conflict of interest

- (a) A Board Member who has any direct or indirect financial or personal interest in a matter being considered must declare that interest; and
- (b) must not vote on or participate in discussion on that matter unless authorised by resolution of the Board

13.2 An officer of the Association must exercise his or her powers and discharge his or her duties:

- (a) in good faith in the best interests of the Association;
- (b) for the purpose of furthering the objects of the Association;
- (c) with due care and diligence having particular regard to their office and the duties and obligations of that office; and
- (d) for a proper purpose.

13.3 Board Members must actively engage in the role on the Board of the Association including:

- (a) regularly attending Association events;
- (b) promoting or furthering the interests and objects of the Association; and
- (c) attending not less than 70 per cent of Board Meetings (whether in person or electronically).

13.4 An officer of the Association must not improperly use his or her powers or position to:

- (a) gain an advantage for the officer or another person;
- (b) cause detriment to the Association; or
- (c) for an improper purpose.

President

13.5 The President shall:

- (a) represent the Association and chair all General Meetings and Board Meetings and perform all duties as ordinarily pertain to the office of President;
- (b) be well informed of all the Association's activities;
- (c) be knowledgeable of the future directions and plans of the Association;
- (d) foster a strong working relationship with local government, affiliated associations, Basketball WA and other sporting clubs;
- (e) represent the Association at local, regional and state level;
- (f) be a supportive leader for all Members;
- (g) act as a facilitator for Association activities;
- (h) ensure the planning for the future is carried out in accordance with the objects and the strategic plan, while also ensuring the strategic plan is reviewed annually;
- (i) be the point of contact between the General Manager and the Board outside of Board meetings; and
- (j) carry out any other duty given to the President under these Rules or by the Board.

13.6 In the event of the absence of the President from a Board meeting or General Meeting the Vice President will convene and preside.

Vice President

13.7 The Vice President shall:

- (a) attend Board meetings;
- (b) assist the President in carrying out his or her duties;
- (c) assume the duties of the President in his/her absence;
- (d) devote time with each Board Member to maintaining a sound understanding of the running of the Association and assist other Board Members with their duties as required;
- (e) be aware of the future direction and plans of the Association and act as a planning coordinator; and
- (f) perform other duties as may be prescribed by the President or the Board for the role of Vice President.

Secretary

13.8 The Secretary shall:

- (a) maintain on behalf of the Association an up-to-date copy of these Rules, as required under section 35(1) of the Act;

- (b) unless another Member/Staff is authorised by the Board to do so, maintain on behalf of the Association the register of Members and recording in the register any changes in the membership, as required under section 53(1) of the Act;
- (c) unless another Member/Staff is authorised by the Board to do so, maintain on behalf of the Association a record of Board Members and other persons authorised to act on behalf of the Association, as required under section 58(2) of the Act;
- (d) ensure the safe custody of the books of the Association, other than financial records, financial statements, and financial reports;
- (e) call for agenda items from Board Members prior to meetings and prepare the agenda in consultation with the President;
- (f) circulate the agenda and relevant papers to the Board at least one (1) week prior to each meeting;
- (g) act as the minute taker at Board and General Meetings, ensuring accurate recording of proceedings, resolutions, and decisions;
- (h) circulate approved minutes to the Board and Members as appropriate, and in any case no later than one (1) week after the meeting or, in exceptional circumstances, no later than two (2) weeks after the meeting;
- (i) maintain an action register of decisions requiring follow-up and a motion register recording all resolutions passed by the Board and the Members;
- (j) carry out any other duty given to the Secretary under these rules or by the Board;
- (k) ensure that the General Manager carries out the following duties on behalf of the Association:
 - (i) deal with the Association's correspondence;
 - (ii) consult with the President regarding the business to be conducted at each Board meeting and General Meeting; and
 - (iii) prepare any notices required for all meetings and for the business to be conducted at meetings.

Treasurer

13.9 The Treasurer shall:

- (a) unless another Member/Staff is authorised by the Board to do so, ensure that any amounts payable to the Association are collected and issue receipts for those amounts in the Association's name;
- (b) unless another Member/Staff is authorised by the Board to do so, ensure that any amounts paid to the Association are credited to the appropriate account of the Association, as directed by the Board;
- (c) unless another Member/Staff is authorised by the Board to do so, ensure that any payments to be made by the Association that have been authorised by the Board or

at a General Meeting are made on time;

- (d) ensure that the Association complies with the relevant requirements of Part 5 of the Act;
- (e) unless another Member/Staff is authorised by the Board to do so, ensure the safe custody of the Association's financial records, financial statements and financial reports;
- (f) if the Association is a tier 1 association, coordinate 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, coordinate the preparation of the Association's financial report before its submission to the Association's Annual General Meeting;
- (h) provide 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) carry out any other duty given to the Treasurer under these rules or by the Board.

14. Convening Board Meetings

Convening a meeting of the Board

- 14.1 The Board must meet at least 10 times each year on the dates and at the times and places determined by the Board.
- 14.2 The date, time and place of the first Board meeting must be determined by the Board Members as soon as practicable after the Annual General Meeting at which the Board Members are elected.
- 14.3 A Special Board Meeting is a meeting of the Board that is outside of normal scheduled meetings (e.g., called urgently or for a specific matter).
- 14.4 Special Board meetings may be convened by the President or any two (2) Board Members. Under clause 14.4, the power to call such a meeting (convene) sits with:
 - (a) the President (acting alone), or
 - (b) any two Board Members acting together.

Notice of meeting

- 14.5 Notice of a meeting of the Board must be given in accordance with this constitution and the Act.
- 14.6 Notice of each Board meeting must be given to each Board Member at least 48 hours before the time of the meeting.
- 14.7 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.

- 14.8 The only business that may be conducted at the meeting is the business described in the notice.
- 14.9 Urgent business not described in the notice may be admitted at the discretion of the Chair, provided a majority of Board Members present consent to treating the business as urgent.
- 14.10 A Special Board Meeting convened under clause 14.4 must be notified to all Board Members in writing (including by electronic means) which specifies the date, time, place (or method, if by electronic means), and business to be conducted at the meeting provided that:
- (a) unless otherwise agreed by all Board Members, at least seven (7) days' notice of the meeting, together with the agenda and any supporting documents, must be provided;
 - (b) in cases of urgency, a Special Board Meeting may be convened with shorter notice, provided a majority of Board Members consent to the shorter notice period; and
 - (c) no business other than that specified in the notice may be transacted at a Special Board Meeting, unless all Board Members present agree otherwise.
- 14.11 A Board Meeting, whether ordinary or special, may be held using any form of technology consented to by all Board Members, provided all participating Board Members are able to hear and communicate with each other simultaneously. A Board Member participating in a meeting by such means is deemed to be present at the meeting and counts towards the quorum.
- 14.12 Notwithstanding the above, the Board may resolve that a particular meeting be conducted in person only, including (without limitation) meetings dealing with sensitive or significant matters.

Calculation of period of notice

- 14.13 In calculating the period of notice required under clause 14.10 (and any related clauses), the day on which the notice is given or taken to be given, and the day of the meeting, shall both be disregarded.

Notice of cancellation, postponement or change of place

- 14.14 Where a meeting of the Board is convened, the Board may, by notice, cancel the meeting, postpone the holding of the meeting to a later date and time determined by it, or change the place for the meeting. Such notice must:
- (a) state the reason for cancellation, postponement or change of place;
 - (b) specify:
 - (i) the date and time for the holding of the postponed meeting; and
 - (ii) a place for the holding of the postponed meeting and, if the meeting is to be held in two or more places, the technology that will be used to facilitate the holding of the meeting in that manner; and

- (c) be given to each Board Member individually and to each other person entitled to be given notice of a meeting of the Board.

Non-receipt of notice

- 14.15 The non-receipt of a notice under clause 14.10 or the accidental omission to give such a notice to, a person entitled to receive such notice does not invalidate any resolution passed at the relevant meeting.

15. Meetings of the Board

Conduct of Board meetings

- 15.1 The President, or in the absence of the President, the Vice President, must preside as chairperson of a meeting of the Board, and:
- (a) has charge of the general conduct of the meeting and of the procedures to be adopted at it;
 - (b) may require the adoption of any procedure which is, in the President's opinion, necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the meeting; and
 - (c) may terminate discussion or debate on any matter whenever the President considers it necessary or desirable for the proper conduct of the meeting.
- 15.2 If the President and Vice-President are absent or are unwilling to act as President of a meeting, the Board Members at the meeting must choose one of them to act as Chair of the meeting.
- 15.3 The procedure to be followed at a Board meeting must be determined from time to time by the Board.
- 15.4 The order of business shall follow the agenda circulated by the Secretary in accordance with clause 13.8. The Chair may, with the consent of the meeting, vary the sequence for convenience, provided all agenda items are addressed.
- 15.5 A Member or other person who is not a Board Member may attend a Board meeting if invited to do so by the Board.
- 15.6 A person invited under clause 15.5 to attend a Board 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 Board to do so; and
 - (c) cannot vote on any matter that is to be decided at the meeting.

Voting at Board meetings

- 15.7 Each Board Member present at a Board meeting has one vote on any question arising at the meeting.
- 15.8 A motion is carried if a majority of the Board Members present at the Board meeting vote in favour of the motion.
- 15.9 If the votes are divided equally on a question, the President/Chair of the meeting has a second or casting vote.
- 15.10 A vote may take place by the Board Members present indicating their agreement or disagreement or by a show of hands, unless the Board decides that a secret ballot is needed to determine a particular question.
- 15.11 If a secret ballot is needed, the President/Chair of the meeting must decide how the ballot is to be conducted

Use of technology at meetings

- 15.12 Members may attend meetings by telephone or by video-conferencing by prior arrangement with the Secretary or Delegate.
- 15.13 A Member who participates in a meeting in accordance with clause 15.12 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.

Minutes of Board meetings

- 15.14 The Board must ensure that minutes are taken and kept at each Board meeting.
- 15.15 The minutes must record the following:
- (a) the names of the Board Members present at the meeting;
 - (b) the name of any person attending the meeting under clause 15.5;
 - (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.
- 15.16 The minutes must be prepared, confirmed and stored in the following manner:
- (a) the Secretary must prepare the minutes of each Board meeting and circulate them in accordance with clause 13.8;
 - (b) the minutes must be submitted for confirmation at the next Board meeting and upon confirmation, the President/Chair of that meeting must sign a hard copy as a true and correct record;
 - (c) the signed hard copy shall be stored at the Association's office, and a soft copy shall be retained on the Association's secure drive; and
 - (d) together, these records constitute the Association's minute register for the purposes of this Constitution and any applicable law and, for the avoidance of doubt, the Association is not required to maintain a bound "minute book".

15.17 When the minutes of a Board meeting have been signed as true and correct, they are, until the contrary is proved, evidence that:

- (a) the meeting to which the minutes relate was duly convened and held and the matters recorded as having taken place at the meeting took place as recorded; and
- (b) any appointment purportedly made at the meeting was validly made.

Circulating Board resolutions

15.18 The Board may pass a resolution without a meeting if all Board Members entitled to vote on the resolution indicate their agreement in writing to the resolution set out in the document or message. Separate copies or messages may be used for indicating agreement, provided the wording of the resolution is identical in each. The resolution is passed when the last Board Member entitled to vote indicates agreement.

Electric Signatures and Consents

15.19 For the purposes of clause 15.18, “in writing” includes electronic communications (including email, electronic signature platforms, SMS, messaging applications, or other technology) that clearly and unambiguously record a Member’s agreement (e.g., “I agree”, “Yes”, or equivalent).

Out-of-Session Electronic Resolutions (Majority Vote by Technology).

15.20 Between meetings, a resolution may be proposed and voted on by electronic means (including email or a messaging application) if the text of the proposed resolution is circulated to all Board Members by the Secretary at the request of the Chair or any two Board Members.

15.21 The resolution is taken to have been passed as a decision of the Board if, within the stated response period:

- (a) votes in favour are received from a number of Board Members not less than the number required for a quorum at a Board meeting; and
- (b) a majority of the votes cast are in favour; or
- (c) if votes are tied, the President/Chair casts a deciding vote that is in favour.

Timeframe and Urgency.

15.22 Unless the notice states otherwise, the response period for an out-of-session electronic resolution is 72 hours from circulation. In urgent circumstances, the Chair may specify a shorter response period.

15.23 Any resolution passed under clause 15.18 or 15.20 must be recorded by the Secretary and included in the minutes of the next Board meeting. The Secretary must circulate the outcome and the text of the resolution to all Board Members in the same manner as minutes of a Board meeting.

Same Effect as Meeting Resolution

15.24 A resolution passed in accordance with clause 15.18 or 15.20 has the same effect as a resolution passed at a duly convened Board meeting.

16. Delegation

Subcommittees, Subsidiary Offices, and General Manager

16.1 To assist in the conduct of the Association's business, the Board may, by written resolution:

- (a) appoint one or more sub-committees;
- (b) create one or more subsidiary offices and appoint persons to those offices; and/or
- (c) appoint a General Manager to oversee day-to-day operations in accordance with the Board's directions and delegated authority.

16.2 A sub-committee may consist of any number of people, whether or not they are Members, as the Board considers appropriate.

16.3 Unless the Board resolves otherwise, each sub-committee must report to the Board as required in its terms of reference.

16.4 A person may be appointed to a sub-committee, subsidiary office or as the General Manager whether or not they are a Member.

16.5 Subject to the Act, this Constitution, Board policies and any directions given by the Board:

- (a) a sub-committee may meet and conduct business as it considers appropriate within its approved terms of reference and delegated authority, and must report to the Board as required;
- (b) the holder of a subsidiary office may carry out the functions assigned to them within the scope of their delegation; and
- (c) the General Manager may manage the Association's operations, finances (within approved limits and budget).

16.6 No subcommittee, subsidiary office holder or the General Manager has authority to bind the Association except to the extent expressly authorised or delegated by the Board.

16.7 Appointments and delegations made under this clause may be amended or revoked at any time in accordance with clause 16.13.

Delegation of power or performance of duty

16.8 The Board may, by written resolution, delegate to a subcommittee, the holder of a subsidiary office, or the General Manager the exercise of any power or the performance of any duty of the Board, except:

- (a) the power to delegate; and
- (b) any duty that is non-delegable under law or this Constitution.

- 16.9 A power or duty delegated under this clause may be exercised or performed by the delegate strictly in accordance with the terms of the delegation and subject to the Act, this Constitution, and any relevant Board policies (including any Delegations Policy).
- 16.10 A delegation may be general or specific and may be made subject to conditions, qualifications, limitations, monetary thresholds, exceptions, and time limits as specified in the instrument of delegation.
- 16.11 The delegation does not prevent the Board from exercising or performing at any time the power or duty delegated.
- 16.12 Any act or thing done by a delegate in accordance with a valid delegation has the same force and effect as if it had been done by the Board.
- 16.13 The Board may amend or revoke any delegation at any time by resolution. Unless the Board specifies otherwise, the amendment or revocation takes effect when written notice is given to the delegate, or— in urgent circumstances—immediately, provided written notice is given as soon as practicable thereafter. The Secretary must record each delegation and any amendment or revocation in the Association’s records.
- 16.14 The delegates must report to the Board as required by the terms of the delegation and remain accountable to the Board for the proper exercise of delegated powers and duties.
- 16.15 A delegate must not sub-delegate any power or duty unless expressly authorised by the Board in the instrument of delegation.
- 16.16 A delegation continues in force notwithstanding any change in the composition of the Board or office holders, until it expires by its terms or is amended or revoked by the Board.
- 16.17 A certificate or extract signed by the Secretary stating the existence and terms of a delegation constitutes sufficient evidence of that delegation to third parties.

General Manager

- 16.18 The General Manager shall, unless otherwise determined by the Board:
- (a) be responsible for the appointment and management of all staff engaged in the operations of the Association;
 - (b) determine and review lines of reporting of staff within the Association to ensure the effective and efficient discharge of duties;
 - (c) act in the best interests of the Association.
- 16.19 The General Manager has authority to dismiss staff or team members where necessary in the best interests of the Association. The General Manager must provide prior notice to the Board of any intended dismissal, except in cases requiring immediate action, in which case the Board shall be notified as soon as practicable thereafter.
- 16.20 The terms and conditions of employment of Staff shall be determined by the General Manager in accordance with:
- (a) the stated policies of the Board.
 - (b) the requirements of the relevant industrial award or agreement applicable to the role.

- (c) proper regulatory and legislative requirements; and
- (d) industry best practice.

16.21 Where the Board has delegated operational control of the Association to the General Manager, the General Manager and Bookkeeper shall manage general accounts and banking responsibilities up to a monetary limit approved by the Board.

16.22 In the absence of an approved limit, any financial transaction or request must be co-signed by an Office Bearer and must first be approved by the Board.

17. General Meetings of the Association

Annual General Meeting

17.1 The Board must determine the date, time and place of the Annual General Meeting each year.

17.2 If it is proposed to hold the Annual General Meeting more than 6 months after the end of the Association's financial year, the Secretary or Delegate must apply to the Commissioner for permission under section 50(3)(b) of the Act within 4 months after the end of the financial year.

17.3 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 Board's annual report on the Association's activities during the preceding financial year;
 - (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;
 - (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;
- (c) to elect the Office Holders of the Association and other Board Members;
- (d) if applicable, to appoint or remove a reviewer or auditor of the Association in accordance with the Act; and
- (e) to confirm or vary the entrance fees, subscriptions and other amounts (if any) to be paid by Members.

- 17.4 Any other business of which notice has been given in accordance with these rules may be conducted at the annual General Meeting.

Special General Meeting

- 17.5 The Board may convene a Special General Meeting.
- 17.6 The Board must convene a Special General Meeting if at least 20% of the Ordinary Members require a Special General Meeting to be convened.
- 17.7 The Members requiring a Special General Meeting to be convened must:
- (a) make the requirement by written notice given to the Secretary or Delegate; and
 - (b) state in the notice the business to be considered at the meeting; and
 - (c) each sign the notice.
- 17.8 The Special General Meeting must be convened within 28 days after notice is given under clause 17.7(a).
- 17.9 If the Board does not convene a Special General Meeting within that 28-day period, the Ordinary Members making the requirement (or any of them) may convene the Special General Meeting.
- 17.10 A Special General Meeting convened by Members under clause 17.9:
- (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.

Notice of General Meetings

- 17.11 The Secretary or Delegate, or, in the case of a Special General Meeting convened under rule 17.6, the Ordinary 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.
- 17.12 The notice must:
- (a) specify the date, time and place of the meeting;
 - (b) indicate the general nature of each item of business to be considered at the meeting;
 - (c) If the meeting is the Annual General Meeting, include the names of the Members who have nominated for election to the Board under clause 12; 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;
 - (ii) state that the resolution is intended to be proposed as a Special Resolution;

and

(iii) comply with clause 17.11(a).

17.13 Notice of a General Meeting given to an ordinary Member under clause 17.11 and 17.12 must:

- (a) state that the Member may appoint an individual who is an ordinary Member as a proxy for the meeting; and
- (b) include a copy of any form that the Board has approved for the appointment of a proxy.

Proxies

17.14 Subject to clause 17.15, an ordinary Member may appoint an individual who is an ordinary Member as his or her proxy to vote and speak on his or her behalf at an Annual General Meeting.

17.15 An ordinary Member may be appointed the proxy for not more than one (1) other Member.

17.16 The appointment of a proxy must be in writing and signed by the Member making the appointment.

17.17 The Member appointing the proxy may give specific directions as to how the proxy is to vote on his or her behalf.

17.18 If no instructions are given to the proxy, the proxy may vote on behalf of the Member in any matter as the proxy sees fit.

17.19 The appointment of a proxy must be made using the form as determined by the Board.

17.20 A form appointing a proxy must be given to the President not later than 24 hours before the commencement of the meeting for which the proxy is appointed.

17.21 A proxy form lodged after the meeting has commenced or within 24 hours of the meeting commencing shall be invalid.

Expiration of Appointment of Proxy

17.22 An appointment of a proxy is valid only for the meeting specified in the instrument of appointment and for any adjournment or postponement of that meeting, unless the instrument expressly provides otherwise.

18. Conduct of General Meetings

18.1 The President or, in the President's absence, the Vice-President must preside as President of each General Meeting.

18.2 If the President and Vice-President are absent or are unwilling to act as President of a General Meeting, the Board Members at the meeting must choose one of them to act as

president of the meeting.

- 18.3 No business is to be conducted at a General Meeting unless a quorum is present.
- 18.4 If a quorum is not present within 30 minutes after the notified commencement time of a General Meeting:
- (a) in the case of a Special General Meeting — the meeting lapses; or
 - (b) in the case of the Annual General Meeting — the meeting is adjourned to:
 - (i) the same time and day in the following week; and
 - (ii) the same place, unless the President specifies another place at the time of the adjournment or written notice of another place is given to the Members before the day to which the meeting is adjourned.
- 18.5 If:
- (a) a quorum is not present within 30 minutes after the commencement time of an Annual General Meeting held under clause 18.4(b); and
 - (b) at least 2 ordinary Members are present at the meeting,
- those Members present are taken to constitute a quorum.

Adjournment of General Meeting

- 18.6 The President of a General Meeting at which a quorum is present may, with the consent of a majority of the Ordinary Members present at the meeting, adjourn the meeting to another time at the same place or at another place.
- 18.7 Without limiting clause 18.6, 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.
- 18.8 No business may be conducted on the resumption of an adjourned meeting other than the business that remained unfinished when the meeting was adjourned.
- 18.9 Notice of the adjournment of a meeting under this rule is not required unless the meeting is adjourned for 14 days or more, in which case notice of the meeting must be given in accordance with clause 17.11 and 17.12.

Voting at General Meeting

- 18.10 On any question arising at a General Meeting:
- (a) subject to clause 17.15, each ordinary Member has one vote unless the Member may also vote on behalf of a body corporate under clause 18.11; and
 - (b) ordinary Members may vote personally or by proxy.
- 18.11 An Ordinary Member that is a body corporate may, in writing, appoint an individual, whether or not the individual is a Member, to vote on behalf of the body corporate on any question at

a particular General Meeting or at any General Meeting, as specified in the document by which the appointment is made.

- 18.12 A copy of the document by which the appointment is made must be given to the Secretary or Delegate, before any General Meeting to which the appointment applies.
- 18.13 The appointment has effect until:
- (a) the end of any General Meeting to which the appointment applies; or
 - (b) The appointment is revoked by the body corporate and written notice of the revocation is given to the Secretary or Delegate.
- 18.14 Except in the case of a Special Resolution, a motion is carried if a majority of the ordinary Members present at a General Meeting vote in favour of the motion.
- 18.15 If votes are divided equally on a question, the president of the meeting has a second or casting vote.
- 18.16 If the question is whether or not to confirm the minutes of the previous General Meeting, only Members who were present at that meeting may vote.
- 18.17 For a person to be eligible to vote at a General Meeting as an Ordinary Member, or on behalf of an ordinary Member that is a body corporate under clause 18.11, the ordinary Member:
- (a) must have been an Ordinary Member at the time notice of the meeting was given under clause 17.11; and
 - (b) must have paid any fee or other money payable to the Association by the Member.

When Special Resolutions are required

- 18.18 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.
- 18.19 Clause 18.18 does not limit matters in relation to which a Special Resolution may be proposed.

Determining whether resolution carried

- 18.20 Subject to clause 18.22, the President of a General Meeting may, on the basis of general agreement or disagreement or by a show of hands, declare that a resolution has been -
- (a) carried;
 - (b) carried unanimously;
 - (c) carried by a particular majority;
 - (d) lost.
- 18.21 If the resolution is a Special Resolution, the declaration under clause 18.20 must identify the

resolution as a Special Resolution.

- 18.22 If a poll is demanded on any question by the President of the meeting or by at least 3 other Ordinary Members present in person or by proxy:
- (a) the poll must be taken at the meeting in the manner determined by the President and
 - (b) the President must declare the determination of the resolution based on the poll.
- 18.23 If a poll is demanded on the election of the President or on a question of an adjournment, the poll must be taken immediately.
- 18.24 If a poll is demanded on any other question, the poll must be taken before the close of the meeting at a time determined by the President.
- 18.25 A declaration under clause 18.20 or 18.22 must be entered in the minutes of the meeting, and the entry is, without proof of the voting in relation to the resolution, evidence of how the resolution was determined.

Minutes of General Meeting

- 18.26 The Secretary, or a person authorised by the Board, must take and keep minutes of each General Meeting.
- 18.27 The minutes must record the business considered at the meeting, any resolution on which a vote is taken and the result of the vote.
- 18.28 In addition, the minutes of each Annual General Meeting must record:
- (a) the names of the Ordinary Members attending the meeting;
 - (b) any proxy forms given to the President of the meeting under clause 17.20;
 - (c) the financial statements or financial report presented at the meeting, as referred to in clause 17.3(a); and
 - (d) any report of the review or auditor's report on the financial statements or financial report presented at the meeting, as referred to in clause 17.3 (a).
- 18.29 The minutes of a General Meeting must be entered in the Association's minute book within 30 days after the meeting is held.
- 18.30 The president must ensure that the minutes of a General Meeting are reviewed and signed as correct by:
- (a) the president of the meeting; or
 - (b) the president of the next General Meeting.
- 18.31 When the minutes of a General Meeting have been signed 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;

- (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.

19. Quorum

Number for quorum

19.1 Subject to clause 19.2, the quorum for:

- (a) a meeting of the Board is fifty (50) per cent plus 1;
- (b) a General Meeting is ten(10) Members;
- (c) a Special General Meeting is ten(10) Members;
- (d) sub-committee meeting is fifty percent (50%) plus one (1) sub committee member;

19.2 For the purposes of clause 19.1, in determining whether a quorum is present, each individual attending as a proxy is to be counted, except that, where:

- (a) a Member has appointed more than one proxy, only one is to be counted; and
- (b) an individual is attending both as a Member and as a proxy,
that individual is to be counted only once.

Requirement for a quorum

19.3 An item of business may not be transacted at a meeting of the Board unless a quorum is present when the meeting proceeds to consider it.

If quorum not present

19.4 If a meeting is not quorate within 15 minutes after its scheduled commencement time, the meeting:

- (a) In the case of a Special Meeting, the meeting lapses; and
- (b) In any other case, stands adjourned to the same day in the next week and the same time and place, or to such other day, time and place as the Board determines.

Use of technology at meetings

19.5 Members may attend meetings by telephone or by video-conferencing by prior arrangement with the Secretary or Delegate.

19.6 A Member who participates in a meeting in accordance with clause 19.5 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.

20. Financial Matters

Financial year

- 20.1 Each Financial Year of the Association is the period of 12 months commencing on 1st January and ending on 31st December, or the period notified to the Commissioner under section 7(4)(e) or, if relevant, section 29(5)(e) of the Act.

Not-for-profit

- 20.2 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.
- 20.3 A payment may be made to a Member out of the funds of the Association only if it is authorised under clause 20.4.
- 20.4 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 payment of interest, on money borrowed by the Association from the Member, at a rate not greater than the cash rate published from time to time by the Reserve Bank of Australia; or
 - (c) the payment of reasonable rent to the Member for premises leased by the Member to the Association; or
 - (d) the reimbursement of reasonable expenses properly incurred by the Member on behalf of the Association.

Source of funds

- 20.5 The funds of the Association may be derived from entrance fees, annual subscriptions, donations, fund-raising activities, grants, interest and any other sources approved by the Board.

Control of funds

- 20.6 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.
- 20.7 Subject to any restrictions imposed at a General Meeting, the Board may approve expenditure on behalf of the Association.
- 20.8 The Board may authorise the treasurer to expend funds on behalf of the Association up to a specified limit without requiring approval from the Board for each item on which the funds are expended.
- 20.9 All cheques, drafts, bills of exchange, promissory notes and other negotiable instruments of the Association must be signed by person expressly authorised by the Board.

20.10 All funds of the Association must be deposited into the Association's account within 5 working days after their receipt.

Financial statements and financial reports

20.11 For each financial year, the Board must ensure that the requirements imposed on the Association under Part 5 of the Act relating to the financial statements or financial report of the Association are met.

20.12 Without limiting clause 20.11, those requirements include:

- (a) if the Association is a tier 1 association, the preparation of the financial statements;
- (b) if the Association is a tier 2 association or tier 3 association, the preparation of the financial report;
- (c) if required, the review or auditing of the financial statements or financial report, as applicable;
- (d) the presentation to the annual General Meeting of the financial statements or financial report, 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.

Independent Audit

20.13 Where the Association's gross annual income exceeds \$250,000, the accounts shall be subject to an independent audit by a qualified auditor at least once every two (2) financial years. The Board may, at its discretion, resolve to conduct an audit more frequently if it considers this appropriate.

21. Records

Maintenance of records

21.1 The Association shall keep records of the books of the Association; the financial records, financial statements, and financial reports of the Association; minutes of all proceedings; and any other document or record of information concerning the dealings of the Association.

21.2 The records of the Association must be retained for at least 7 years.

Record of Office Holders

21.3 The record of Board Members and other persons authorised to act on behalf of the Association that is required to be maintained under section 58(2) of the Act must be kept in the Secretary's custody or under the Secretary's control.

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the Secretary's custody or under the Secretary's control.

Inspection of records and documents

- 21.5 Clause 21.8 applies to a Member who wants to inspect:
- (a) the record of the names and addresses of Board Members, and other persons authorised to act on behalf of the Association, under section 58(3) of the Act; or
 - (b) any other record or document of the association.
- 21.6 The Member must contact the Secretary to make the necessary arrangements for the inspection. The inspection must be free of charge.
- 21.7 If the Member wants to inspect a document that records the minutes of a Board meeting, the right to inspect that document is subject to any decision the Board has made about minutes of Board meetings generally, or the minutes of a specific Board meeting, being available for inspection by Members.
- 21.8 The Member may make a copy of or take an extract from a record or document referred to in clause 21.5(a) but does not have a right to remove the record or document for that purpose.
- 21.9 The Member must not use or disclose information in a record or document referred to in clause 21.5(a) except for a purpose:
- (a) that is directly connected with the affairs of the Association; or
 - (b) that is related to complying with a requirement of the Act.

Data privacy policy

- 21.10 The Association shall maintain a data privacy policy governing the collection, storage, use, and disclosure of Member information, in compliance with applicable laws.

22. By-Laws

- 22.1 The Association may, by resolution at a General Meeting, or a special General Meeting convened for this purpose, make, amend, or revoke by-laws.
- 22.2 By-laws may:
- (a) provide for the rights and obligations that apply to any classes of membership or associate membership approved by the Board;
 - (b) impose restrictions on the Board's powers, including the powers to dispose of the Association's assets;
 - (c) impose requirements relating to the financial reporting and financial accountability of the association and the auditing of the Association's accounts; and
 - (d) provide for any other matter the Association considers necessary or convenient to be dealt with in the by-laws.

22.3 A by-law is of no effect to the extent that it is inconsistent with the Act, the regulations, or these rules.

23. General Matters

Executing documents

23.1 The Association may execute a document if the document is signed by two Board Members.

Notice to Members

23.2 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;
- (b) sent by prepaid post to the recorded postal address of the Member; or
- (c) sent by facsimile or electronic transmission to an appropriate recorded number or recorded electronic address of the Member.

Publication of statements about Association business prohibited

23.3 A Board Member must not publish, or cause to be published, any statement about the business conducted by the Association at a General Meeting or Board meeting unless:

- (a) the Board Member has been authorised to do so at a Board meeting; and
- (b) the authority given to the Board Member has been recorded in the minutes of the Board meeting at which it was given.

Social Media

23.4 No Member, Board Member, or Staff may make any statements or representations purporting to, or appearing to be from or on the authority of the Association save for as delegated by the Board.

23.5 Any statements or representations made in accordance with clause 23.4 must be in accordance with the Association's social media policy at the time, or as amended from time to time and approved by the Board.

23.6 Regardless of any delegation, no social media statements or representations shall be deemed to be in accordance with these rules or the Association's social media policy if at the time of publication it would be reasonably assessed as detrimental to the Association or not in accordance with the objects of the Association.

Surplus Property

23.7 On winding up, surplus property must be given or transferred to another incorporated association with similar objects and which is not carried on for the purposes of profit or gain to its individual Members, as determined by Special Resolution.

23.8 On the cancellation of the incorporation or the winding up of the Association, its surplus property must be distributed as determined by Special Resolution by reference to the

persons mentioned in section 24(1) of the Act.

24. Alteration of Constitution

- 24.1 If the Association wants to alter or rescind any of these rules, or to make additional rules, the Association may do so only by Special Resolution and by otherwise complying with Part 3 Division 2 of the Act.
- 24.2 Any amendment to these rules must be lodged with the Commissioner within one month after the Special Resolution is passed, whether or not they require approval of the Commissioner under section 31 or section 33 of the Act. No amendment shall come into force until it is lodged in accordance with this rule or as otherwise provided in the Act.